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California JOURNAL

Independent analysis of politics and government

1970 25 1995 Public Service Journalism

Inside:

Legislative leadership
Arming of California
Three-strikes aftermath

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Our position, word by word.

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OCTOBER 1995
VOLUME XXVI, NUMBER 10

California JOURNAL

Independent analysis of politics and government

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As an ongoing feature of our 25th Anniversary year, the *Journal* continues its exploration of the California dream by presenting essays and articles on issues of importance to the state's future. This month, we focus on public safety.

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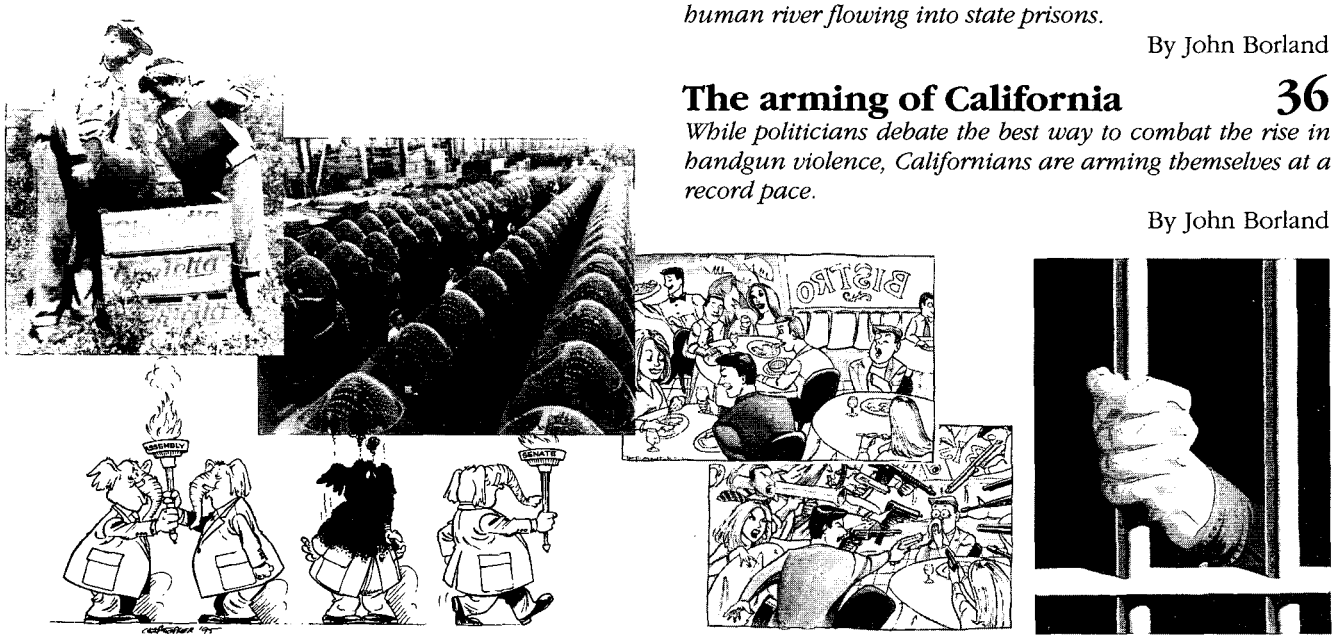
While politicians debate the best way to combat the rise in handgun violence, Californians are arming themselves at a record pace.

By John Borland



Cover: Blue Man Fleeing Gun (pastel, 1984) by Rupert Garcia. Courtesy of the Crocker Art Museum, Sacramento. Gift of the Crocker Art Museum Association with matching funds from the National Endowment for the Arts. Born in French Camp, California, in 1941, Garcia received his BA and MA from San Francisco State University and continued his advanced studies at UC Berkeley. He was one of the founders of the Galeria de la Raza in San Francisco in 1970. He is known for his poster art as well as large pastel works on paper. His art portrays a strong social sense and has included portraits of politically controversial figures such as Orozco, Frida Kahlo and the Rosenbergs.

The Crocker Art Museum is located at 216 O Street in downtown Sacramento. The Museum is open Wednesday through Sunday from 10:00 am to 5:00 pm, and Thursday evenings until 9:00 pm. Please call (916) 264-5423 for further information.

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Up Front

UMBRAGE

Chutzpah of the month. Every time we attempt to retire this award in someone's honor, another candidate ambles along to elbow the previous honoree off the top of the trophy. Now comes Assemblyman Larry Bowler (R-Elk Grove), one of the champions of the failed recall effort against Assemblyman Mike Machado (D-Linden). On the day following the election, Bowler plopped himself down in front of Assembly Rules, where he began to tout a bill — HR 18. Basically, Bowler's little brainstorm would have shifted the burden of paying for the recall from the counties to the Legislature by reimbursing county expenses out of the Assembly Operating Fund. It currently is estimated that the recall cost San Joaquin County some $300,000 — with more to come if the county must eventually reimburse Machado for the money he spent defending himself. Suffice to say that Bowler's proposal received a less-than-enthusiastic reception from Rules. Not even Republicans on the committee had the stomach to move it for a vote. Another failure for Mr. Bowler? Hardly. Now he'll be able to go back to the home folks in San Joaquin County and say, "Hey, I tried to get your money back, but those nasty Democrats wouldn't go along with me." Chutzpah, after all, is not limited by rules of logic or reason.

First strike. Attorney General Dan Lungren is becoming more open these days about his desire to run for governor in 1998. To this end, he has sent out a fund-raising letter that does not equivocate: "I want to make it clear to you that it would be my intention to wage such a campaign for governor," he writes to potential givers. Lungren even identifies the Democrat most likely to oppose him for the office — Lieutenant Governor Gray Davis. At this relatively early date, however — the *1996* elections have yet to take place — Lungren's letter probably isn't aimed at Davis. If it has a message for anyone, it's a fellow *Republican.* Word has it that Mike Huffington is listening.

Promoting business. Former state Senator Jim Nielsen (R-Woodland) now serves on the state Board of Prison Terms. Late last month, Nielsen was shopping at a Woodland Safeway one Sunday evening when he noticed one of the other patrons swat a cashier, then help himself to a wad of money from a check-out register. The man fled, with Nielsen in hot pursuit. The former legislator corraled the would-be felon as he tried to climb a fence and held the suspect until store employees arrived on the scene to help subdue the man. According to a news report, the robber had $243 in cash and food stamps when apprehended.

New hunk. The last time a "hunk of the month" emerged from the Legislature, it was former Assemblyman Rusty Arieas (D-Los Banos), who some years ago earned that honor from *Cosmopolitan* magazine. Okay, so, the Matier & Ross column in the *San Francisco Chronicle* isn't *Cosmo,* but that's where you'll find the latest hunk — a photo of Senator Quentin Kopp (I-San Francisco), "dressed" only in a towel draped around his neck. Kopp is sitting in what appears to be a steam bath or locker room. The *Chronicle* even provided a convenient dotted line around the photo, just in case you wanted to cut it out and hang it on the wall. Or somewhere else.

Deadheads. When the Grateful Dead's Jerry Garcia died in August, his named showed up in both houses of the Legislature. As is the custom, a pair of lawmakers who represented the Bay Area that Garcia called home — Assemblyman Tom Bates (D-Berkeley) and Senator Milton Marks (D-San Francisco) — asked that their respective houses adjourn in Garcia's memory. It was altogether fitting that the pair should do so. Marks' long career paralleled Garcia's. Marks was first elected to the Senate in 1967 — just as the free-spirited lifestyle that Garcia represented was taking over a chunk of Marks' district known as Haight-Ashbury. And Bates represents Berkeley, which is still stuck in 1967. But Garcia's greatest following came from the group known by the distinctive title of "Deadheads." And given the fact that the Legislature so far this season has been preoccupied with speakership fights and recall vendettas — to the exclusion of meaningful policy legislation — what better group to adjourn in Garcia's memory than one filled with "Deadheads."

Mixed metaphors. Assemblyman David Knowles (R-Cameron Park), speaking to a witness during a hearing on earthquake insurance, defended a funding proposal by saying, "To the extent you tinker with the building blocks in the diagram, you risk upsetting the whole apple cart." It's the best plate of scrambled eggs since then-Assemblyman Ross Johnson's (R-Fullerton) comment during the 1991 budget debate: "All the sacred cows have come home to roost."

Love thy enemy. When conservative Assemblyman Steve Baldwin (R-La Mesa) appeared on a panel at a recent Sacramento "campaign school" sponsored by the California Independent Business PAC and the Young Republican Federation of California, the rookie lawmaker warned the audience that opponents "want to portray Christians as right-wing kooks, that you are going to handcuff them to a church pew." He then excoriated a liberal group known as Project Tocsin, which monitors conservative organizations, scanning the audience for the group's representative. Upon finding the unlucky interloper, a red-faced Baldwin pointed him out and exclaimed, "This guy is a fascist!" When Baldwin finished his talk, panel moderator Assemblyman Jim Rogan (R-Glendale) moved on to the next speaker by saying, "Thank you for that expression of Christian tolerance."

"An individual who is observed to be inconstant to his plans, or perhaps to carry on his affairs without any plan at all, is marked at once, by all prudent people, as a speedy victim to his own unsteadiness and folly."

— Alexander Hamilton

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Richard Zeiger

Editor
A.G. Block

Senior Editor
Steve Scott

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Kirsten Mangold

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Rostrum
LETTERS

LA Unified

Regarding your "Southern Exposure" column (see *CJ*, September 1995), I mostly agree with the political analysis, but I regret that several important educational facts were left out. Our district faces challenges seen in very few places around the world: remarkable cultural, ethnic and language diversity; desperate poverty; and deteriorating social conditions for students we serve and their families. In the face of these challenges, the district has adopted the LEARN reform plan — the most comprehensive and ambitious agenda for urban school reform in the nation. As we begin the third year of LEARN implementation, 191 schools are participating in this exciting effort, with positive and promising results. We have approved and supported more innovative charter schools than any district in the country, including one which has been able to extend the school year to 200 days. We have streamlined central administration far below the state average and decentralized authority to 27 local community clusters to oversee educational decisions from kindergarten through high school in each neighborhood. This past year, our Marshall High School won the National Academic Decathalon, besting the top schools from 49 other states. Our Van Nuys High School won the National Science Bowl Competition. All this is to say that the loose use of words like "failure" do a disservice to the exciting and important steps underway to improve student achievement. The column is correct when it notes that the discussion about the break up has nothing to do with teaching or learning in the classroom. It is about politics and political frustrations. Our challenge is to inform and educate the larger community and demonstrate why our current efforts are worthy of support rather than casual dismissal.

MARK SLAVKIN
President
Los Angeles Board of Education

UC and affirmative action

I am prompted, more specifically impelled, to write on the subject of "affirmative action" (see *CJ*, September 1995). The article accurately reported our July 20th discussion but missed a major message purposely imparted, even by our divided board vote. The resolution in its final form endorsed and reconfirmed a continuing university policy to strive for diversity, reflective of California's multicultured population. Most important, after our July action, are the new President Richard Atkinson's and our chancellors' statements to students and to the public that they will follow this stated regental policy of diversity. Governor Pete Wilson even quoted that adopted policy on national television.

The article missed another point, more personal, when it stated without any comment that this regent "abstained." Those who supported the ultimate board action all spoke in favor of "diversity." Thus I proposed a specific amendment saying just that. Regent Ward Connerly, feeling his majority votes "oats," at first rejected that suggestion. This regent then threatened "to notice reconsideration for our next meeting [September] and to hold this matter up for months." The diversity amendment was then accepted. Though abstinence may not make the heart grow fonder, I did abstain for two good reasons: One cannot move for reconsideration if you vote "no" on an approved action but you can if you vote "aye" — not in the cards for me — or if you abstain; I kept that option open. Also, since this very important diversity amendment was adopted, I politely remained quiet.

Our great university, though improperly politicized, will overcome and we will create an outreach program for diversity in appropriate high school communities, regardless of race or gender. However, some of us worry about continuing to attract national and world renowned scholars. We have tarnished ourselves by unnecessarily taking the lead on a raw political issue.

WILLIAM T. BAGLEY
Regent
University of California

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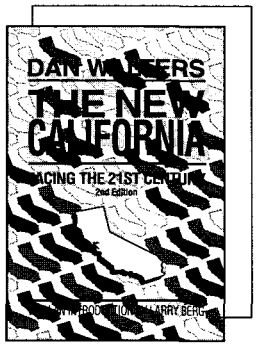
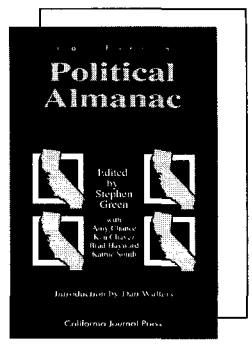
The New California: Facing the 21st Century, 2nd Edition.



By Dan Walters with an introduction by Larry L. Berg. *The Sacramento Bee's* well-known political correspondent, Dan Walters, completed a 9,000-mile odyssey through California's 58 counties which served as the basis for this book. It describes the socioeconomic future of the nation's largest state and political implications of these trends. This 1992 edition is 186 pages long and contains numerous charts with detailed political and demographic data based on the 1990 Census. 51/2 X 8 1/2", $11.95.

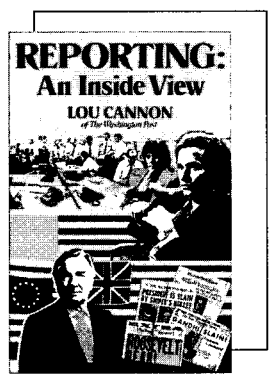
California Political Almanac.



Every reader becomes a political insider with this candid analysis of California's political leaders written by Sacramento's most knowledgeable journalists. The new, 1995-96 *California Political Almanac* contains biographies, photographs, voting records and dis-trict description for every member of the state Senate, Assembly and Congress, as well as for every constitutional office. The *Almanac* also includes chapters on the bureaucracy, lobbyists, media, local government and much more: over 550 pages of data and analysis. 1995, 6x9", $34.95, paper. Available now.

Reagan: The Role of a Lifetime, by Lou Cannon.

The best book on the Reagan presidency by the reporter who covered Reagan for more than 26 years for the *San Jose Mercury News* and *Washington Post*. We have obtained a supply of the original hardcover 900-page edition. Originally sold at $24.95, it is available now to *California Journal* subscribers for $9.95.

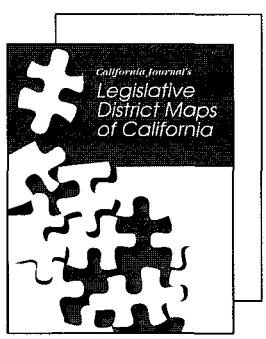


Reporting: An Inside View, by Lou Cannon.

How many of us know what really goes on behind the scenes in the complex process that determines what is and what isn't fit to print? Anyone interested in the working of the press will find *Reporting: An Inside View* fascinating. 1977. 6x9", 308 pages. $9.95 cloth, $4.95 paper.

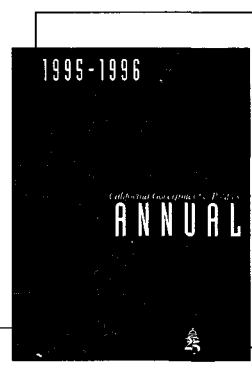
Legislative District Maps of California.

Included in the 20-page booklet are written descriptions of all 80 Assembly, 40 state Senate, 52 congressional and 4 Board of Equalization districts including major-party registration and ethnic data. Also included are 5 pages of maps. 8 1/2 x 11". Prices: 1-2 copies, $4.95 each; 3-49 copies, $2.95 each; 100 or more, $1.49 each.



California Government and Politics Annual, 1995-96.

Published every year, the Annual includes a brief overview and reprints of *California Journal* articles covering the three branches of government, politics and elections, lobbying, finance, local government, direct democracy, and other issues. 8 1/2x11", 96 pages. $8.95, paper.



Campaigning in California.

A practical guide to state and federal election finance laws by the law firm of Nielsen, Merksamer, et. al. This easy-to-understand Q & A format is up to date as of January 1992. 8 1/2 x 11". Price; 1-2 copies, $2.75 each; 3-49 copies, $1.95 each; 50-99 copies, 99¢ each; 100 or more, 74¢ each.

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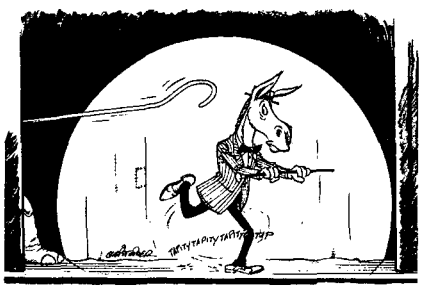
Two Cents Worth

COMMENTARY

Recall mania, RIP?

Thank you, thank you, thank youuuuuu, voters of San Joaquin County. All California lies in your debt because this past August, you atomized the recall effort against Assemblyman Mike Machado (D-Linden), giving him a two-to-one margin of victory. With any luck, the recall will become this year's political pet rock — a fad with the shelf life of a Pete Wilson promise.

And make no mistake. Had Machado lost, platoons of recall weenies would have fanned out across California, tracking down every perceived legislative powder puff, Democrat and Republican alike, and trying to snuff them as well. It would have been the ultimate political gang war, sowing chaos from border to border and draining California government of whatever vitality remains to it. Squashing the Machado recall hopefully has discouraged what promised to be an ugly, ugly trend.



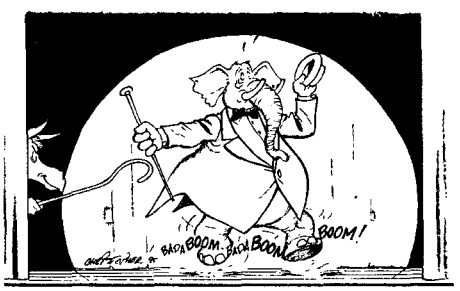
What made the Machado recall so insidious was the lack of any justification for ousting him — except vulnerability and opportunism. It was a wanton act, as criminal in a political sense as a drive-by shooting. Like a drive-by, it jolts the public's perception that the normal patterns of life are immune to manipulation and corruption. Political jolts lead to cynicism, which leads to withdrawal, which leads to loss of faith and trust — and suddenly, the whole sheebang has spiraled downward to the point that everyone is hallucinating about black helicopters.

After the recall failed, one of its chief architects — Board of Equalization member Dean Andal (R-Stockton) — justified the effort to *The Sacramento Bee* in part because it had forced Democrats to spend $1 million "defending a seat they already have," adding that it was money Democrats won't be able to spend in 1996. Another proponent, Senate Minority Leader Rob Hurtt (R-Garden Grove), was even more direct in his opportunism: Machado had barely won in 1994 and therefore was vulnerable, he was ripe for taking, and Republicans needed the seat to gain absolute control of the Assembly. You couldn't find a principle in either of those rationales if you used the Jaws of Life, only vapid trifling with the electorate for political gain.

To voters, the very fact that a recall is mounted suggests foul play and barnyard smells: Some politician has wandered so far astray that the body politic must break from the normal pattern of elections and consume extra energy and money to oust the offender. To a public already weary of politics and politicians, recalls encourage the view that government is broken.

This is not to say that recalls should never be used. You could make a case, for instance, for the effort against former Assemblyman Paul Horcher (I-Diamond Bar). There is plenty of evidence to suggest that Horcher deceived his constituents during the 1994 elections, with nothing more in mind than revenge against fellow Republicans who had mistreated him. And this betrayal was justly dealt with last May when Horcher was bounced from office.

But the recall against Machado, who betrayed no one, falls into a different category. Its promoters went after him, not because he had violated the law or betrayed a trust, but because they thought him weak. As such, they showed little regard for the sanctity of the democratic process. They have argued that their attempt to remove Machado was a supreme example of that process. But they are wrong. It was a perversion of it because their motives were so hypocritical and low-minded. There certainly was nothing in it for the citizens of San Joaquin County — except, of course, a $300,000-plus price tag, courtesy of self-styled fiscal watchdogs like Andal and Assemblyman Larry Bowler (R-Elk Grove), who orchestrated the recall.



Cost and motives aside, specious recalls are misguided missiles, dangerous because they undermine stability. Stability in this case does not mean entrenchment. In a cosmic sense, the fact that Democrats in Congress were torn out by the roots in 1994 has been healthy for the republic. But Democrats were flattened during the regular electoral process, not in the political equivalent of a bayou lynching. Proponents of recall mania pooh-pooh the notion that government must be stable to be effective. But stability is vital to any successful democratic enterprise, and it is fostered by the people's faith and trust in the *system* of governance, regardless of what they may think about any particular government of the moment.

Authors of "The Federalist" understood this when they suggested that an unstable government "poisons the blessing of liberty itself." In Federalist LXII, they wrote about what they called "mutable government," warning that people lose faith when it appears that government does not rest on a stable foundation. "The most deplorable effect ... is that diminuation of attachment and reverence which steals into the hearts of the people, towards a system which betrays so many marks of infirmity... No government, any more than an individual, will long be respected without being truly respectable; nor be truly respectable, without possessing a certain portion of order and stability."

And you thought the folks in San Joaquin County were just deciding the fate of Mike Machado.

— A.G. Block

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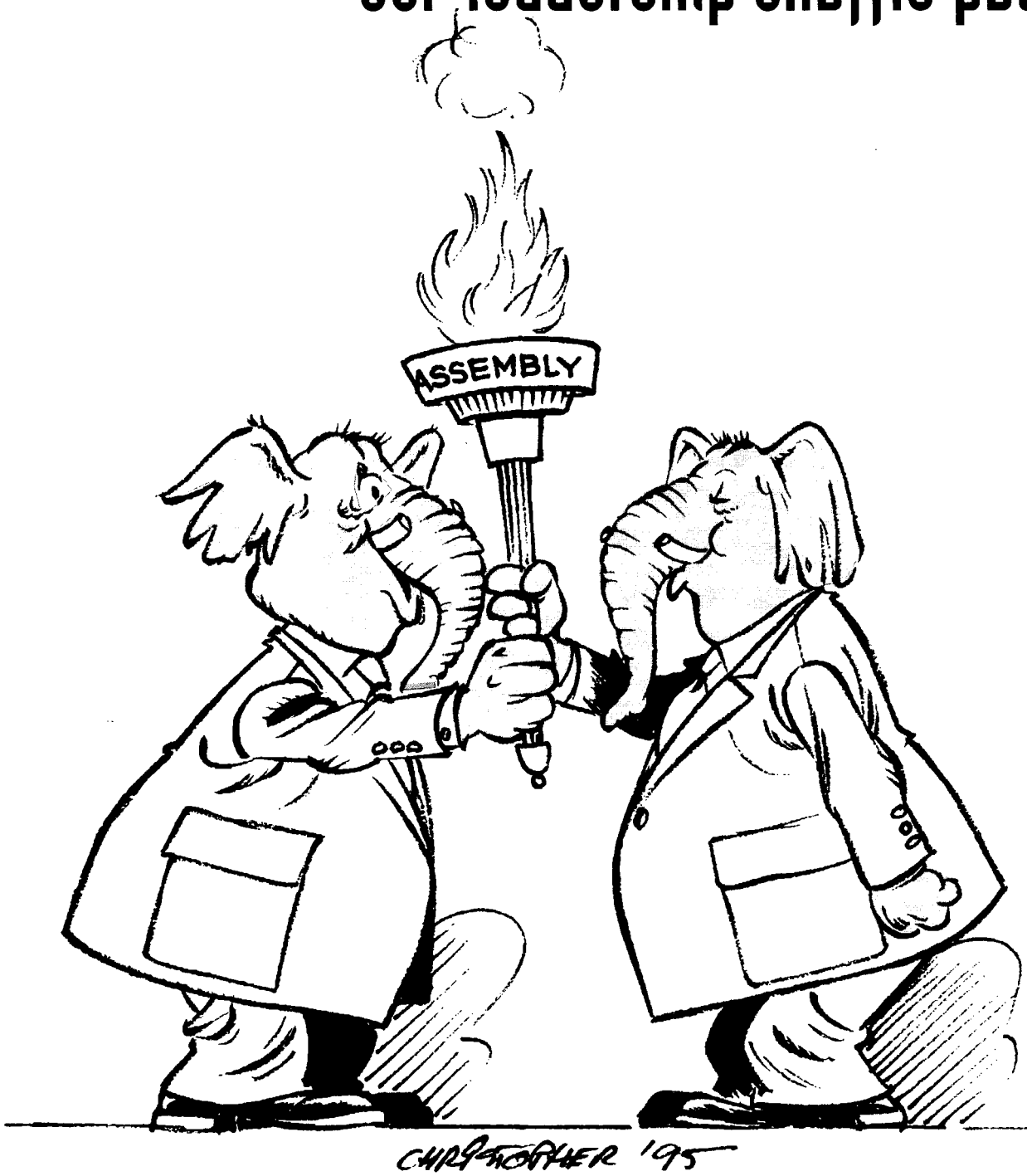
CHANGING OF

GOP leadership shuffle pul



Perhaps the most legendary figure of 19th Century representative government, Benjamin Disraeli, once noted that "in a progressive country, change is constant." While he made his observation at a time of great international upheaval, a student of democratic institutions like Disraeli may yet have raised an eyebrow or two had he seen the changes under way in the California Legislature.

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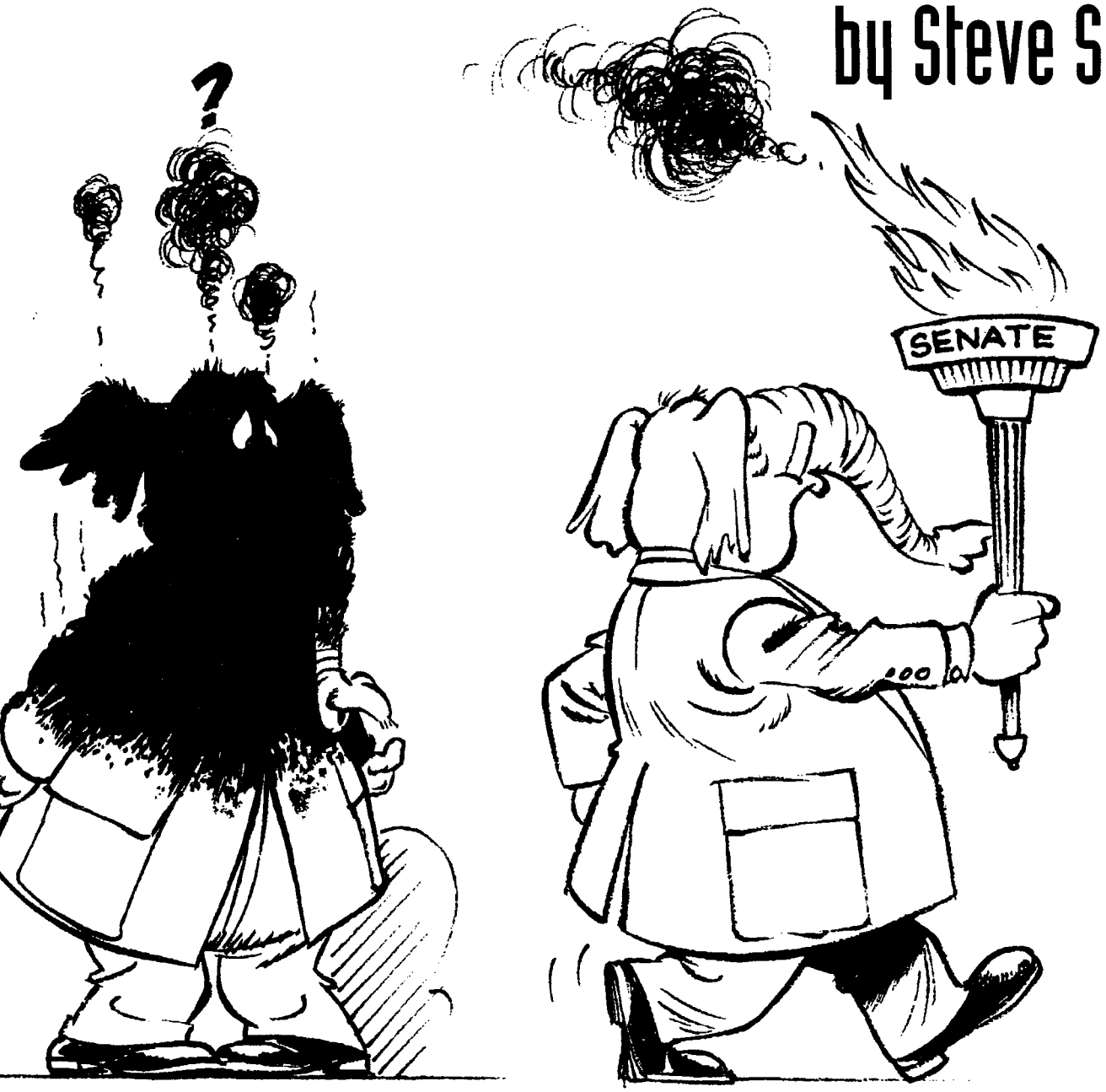
THE RIGHT GUARD

conservative power closer to the throne

by Steve Scott



In an era of term limits, change is not just constant — it's inescapable.

Since the 1990 passage of the term-limits initiative, Proposition 140, two of the longest-tenured leaders in the state's history — Senate President pro Tempore David Roberti (D-Van Nuys) and Assembly Speaker Willie Brown Jr. (D-San Francisco) — have been forced from power. Moreover, the institutional memory in both houses has steadily hemorrhaged away as veteran lawmakers retire and veteran staffers jump ship.

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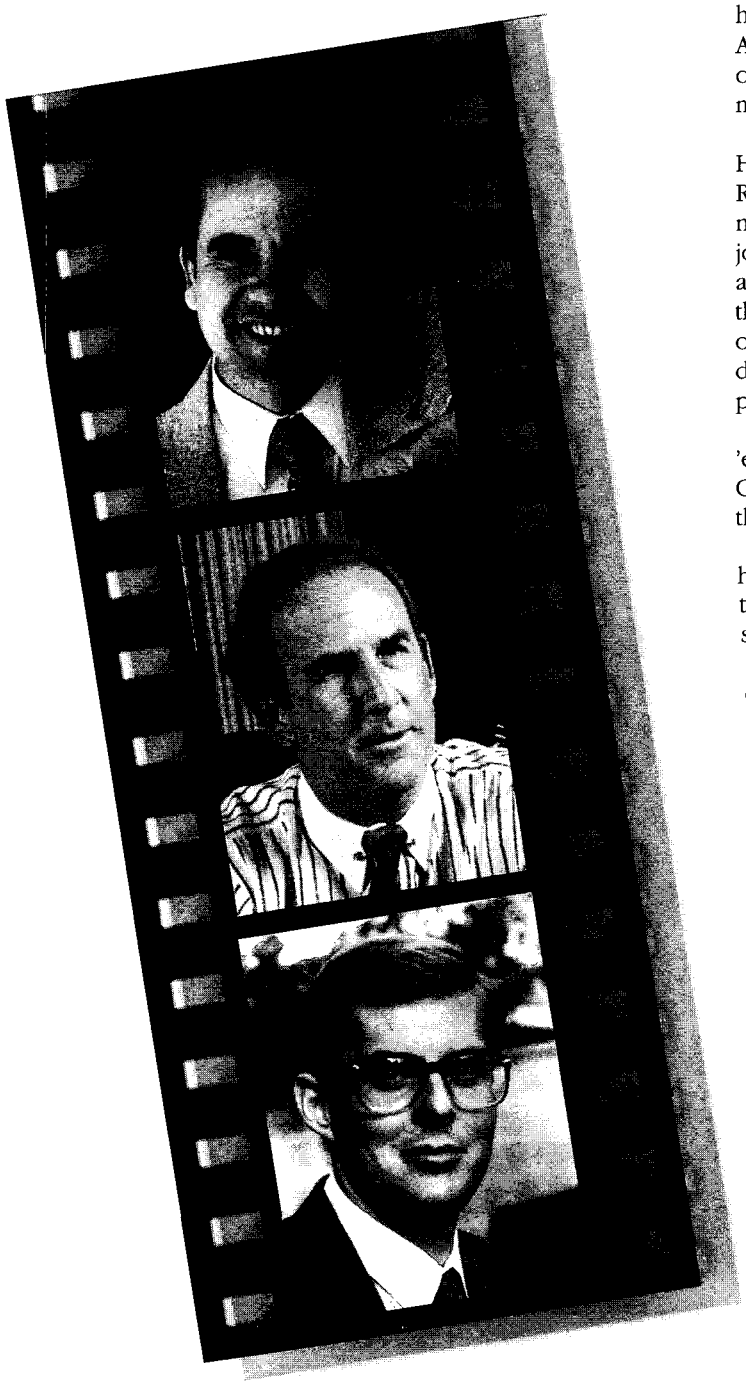
Throughout this recent turmoil, the Republican leaders in both houses — Jim Brulte (R-Rancho Cucamonga) in the Assembly and Ken Maddy (R-Fresno) in the Senate — stayed at their posts, each defying internal and external forces that might have toppled less experienced hands.

During one eventful week this past summer, change finally caught up with Brulte and Maddy, as both passed their leadership torches on to more aggressive, conservative successors. For Brulte, who holds the singular distinction of having lost the speakership twice within one year, the transition was remarkably smooth, as he stepped aside in favor of one of his top lieutenants, Assemblyman Curt Pringle (R-Garden Grove). For Maddy, however, the insurrection was, to quote English philosopher Thomas Hobbes, "nasty, brutish and short," as he was abruptly ousted by conservative Senator Rob Hurtt (R-Garden Grove) two days after Pringle's peaceful ascension.



"Ever since term limits passed, it's been understood that leaders would be rotating out faster than ever before," said Senator Bill Leonard (R-Redlands). "I think this is a reflection of that."

By most accounts, Maddy's ouster was not only the most dramatic, but also the change with the broadest impact on the Legislature itself. Hurtt was one of the founders of the Allied Business PAC, a cadre of wealthy businessmen which has contributed millions of dollars to legislative campaigns, with much of it going to ideological conservatives. When he won a special state Senate election in 1993, Hurtt brought his political bankroll to Sacramento and almost immediately began nipping at Maddy's leadership heels. Hurtt's aggressiveness forced Maddy to give Hurtt a share of power, handing the caucus' election portfolio off to his hard-driving rival. The concession was only a Band-Aid. As the new session began, most insiders felt Hurtt was within one or two votes of the nine he needed to replace Maddy as minority leader.

When lawmakers returned from their summer recess, Hurtt's ninth vote arrived in the form of Senator Newton Russell (R-Glendale). During a regularly-scheduled caucus meeting, Russell delivered a lengthy apologia to Maddy, then joined eight other colleagues in voting to dump him. Newly arrived Senator Ross Johnson (R-Fullerton) abstained. After the vote, Russell refused to amplify on his rationale, saying only that he had "personal reasons." Maddy supporters denounced Russell's defection, accusing the Glendale Republican of vacillation.

"If you're going to vote against somebody, vote against 'em — don't apologize for it," groused Senator William Craven (R-Oceanside). "I'm glad I was not leading him onto the beach [in battle], I can tell you that."

Despite his personal disappointment, Maddy defended his eight-year record as minority leader. "I've tried ... to make this house a place that puts the public's business first," he said.

While the timing of the move, three weeks before the end of the session, struck some as strange, Hurtt insists it was necessary to give him enough time to "rebuild the team and the infrastructure." The "team" to which he referred is the election team for the 1996 campaign. Hurtt freely concedes his interest and abilities lie in elections, saying he has always understood the leader's main responsibility is "to support his incumbents and get new people elected to his caucus." His supporters say this attitude differs from that of Maddy, whom some insiders say had developed a "minority mentality" and didn't work hard enough to get Republicans elected.

"Ken's approach was, 'I've done it this way, I want to continue to do it this way,'" said Hurtt. "I was getting a little itchy to do a little bit more."

The relatively slight warning Maddy was given prior to the revolt seemed at odds with the Senate's reputation for slow-motion gentility. Maddy was clearly stunned at having been blindsided and privately expressed disappointment in the way some of his colleagues — most notably Russell and Senator Tim Leslie (R-Carnelian Bay) — left him hanging. "No one came to me," he said. Maddy has some experience in the field of quick strikes, however. His first stint in the Senate leadership in the early

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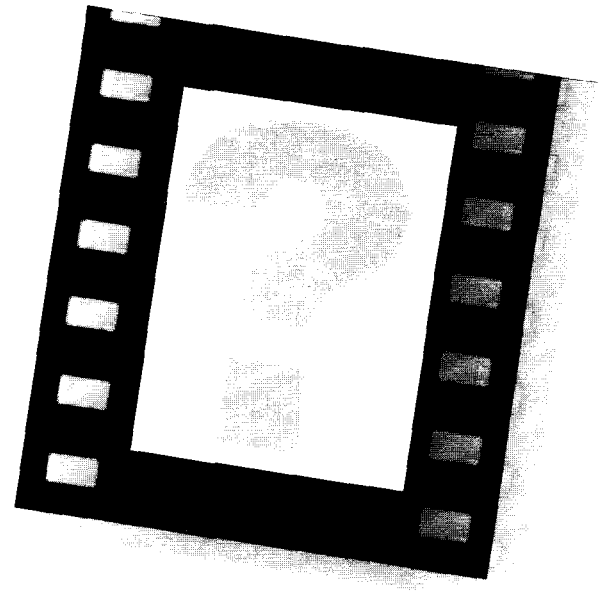
1980s was cut short by a coup which installed former Senator Jim Nielsen (R-Woodland) as minority leader. Maddy, in turn, struck almost as quickly in taking out Nielsen in 1987.

"The traditional way of dealing with leadership is the sudden coup," said Tim Hodson, director of the Sacramento-based Center for California Studies and a former Senate staffer. "The participants are very polite to each other, then they go out and plot the counter-coup."

While the sedate Senate Republicans bore witness to a quick strike, the often-fractious Assembly Republicans conducted a transition that, by the standards of recent history, was miraculously smooth. Almost from the moment the ink was dry on the budget he helped negotiate, Brulte began dropping hints he was ready to pass the torch. He made it official during a session with Los Angeles reporters the Friday before lawmakers returned to Sacramento from their summer recess. Two of his top lieutenants — Pringle and Assemblyman Fred Aguiar (R-Chino) — emerged as rivals to succeed him. So did conservative Assemblyman Bruce Thompson (R-Fallbrook), who led an unsuccessful bid to block Medi-Cal funding for abortions during the budget fight (see *CJ*, September 1995). While the first ballot in caucus left Pringle one vote short of outright victory, the second vote — *sans* the Thompson option — proved decisive.

The significance of Pringle's victory is primarily in its prospective effect on the most visible no-show for the caucus vote — Assembly Speaker Doris Allen (R-Cypress). Allen used Democratic votes to gain the speakership at Brulte's



expense earlier this year (see *CJ*, July 1995) and has since become about as welcome in caucus meetings as Godzilla is in the Tokyo power grid.

While the primary target of Allen's vengeance-tinged rebellion was Brulte, the speaker is, if anything, even angrier with Pringle, whom she has identified as part of the GOP's "Orange County Mafia." For Pringle, the feeling is more than mutual. His district office director recently took a leave of absence to run the recall campaign in Orange County against

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Allen, and Pringle has been the floor jockey for a number of largely fruitless procedural gambits aimed at embarrassing Allen.

While Pringle's rise may be bad news for Doris Allen, the larger institutional impact attends Hurtt's rise to power in the Senate. By many accounts, the Senate is already beginning to assert a dominance that is expected to heighten when term limits take full effect after next year's elections (see *CJ,* August 1995). Hurtt's self-proclaimed desire to concentrate on elections puts him directly in the path of Senate President pro Tempore Bill Lockyer's (D-Hayward) efforts to keep the Senate in Democratic hands. Of the 20 Senate seats up in 1996, 11 are currently held by Republicans, eight by Democrats, and one by term-limited independent Senator Lucy Killea (I-San Diego). Although they have fewer incumbents at risk than they did in 1994, Democrats have more difficult seats to save. GOP election activists view Hurtt's rise as an important step toward getting the party's act together for '96.

"It's better [for Republicans] to have one person in charge," said veteran GOP political consultant Ray McNally. "You always weaken your effort when you have divided responsibilities."

Recognizing the threat posed by Hurtt and his checkbook, Lockyer has stepped up an already-successful campaign to cast his rival as the poster child for the "religious radical right." A blistering news release from the pro tem accompanied Hurtt's election, accusing the new GOP leader of being "anti-labor, anti-choice, anti-minority, and homophobic." Hurtt's response to Lockyer criticism didn't exactly help his case; when informed of the pro tem's broadside, Hurtt said with characteristic offhandedness, "Well, I would maybe then say I think those are just conservative values."

"The religious right-wing's political agenda is reflected by Mr. Hurtt's philosophy," said Lockyer.

Hurtt's influence in legislative politics is hardly limited to the Senate. The new Senate GOP leader has a history of involvement in Assembly elections as well, both as a part of the former Allied Business PAC and on his own. Hurtt was a significant backer of the unsuccessful recall campaign waged this summer against Assemblyman Mike Machado (D-Linden), and has put money into the Allen recall as well. "He holds title to several people [in the Assembly]," said one GOP insider who asked not to be identified. "It's going to be a lot more after next year." Hurtt says he wants to be an active partner with Pringle, putting him in a position to recruit Assembly candidates who might then be in a position to move into the Senate. Hurtt's defenders say this, too, is a step forward for Republicans, since the GOP agenda can't go anywhere without legislative majorities in both houses.

"We're fighting for dominance, and Rob Hurtt's a fighter," said GOP political consultant Wayne Johnson. "In [an earlier] era, Maddy could be a leader. It's a different era in the Senate."

No matter what their influence may be on the partisan makeup of the Legislature, the new leaders share two attributes which could reflect trends for the future. The most noticeable similarity is that both men are from Orange County — in fact, both live in Garden Grove. Traditionally, leaders have been careful to keep their local voters happy, and with Orange County teetering on the brink of economic collapse, some hope more help will come with Pringle and Hurtt joining Allen in the leadership ranks. "If the supervisors offer a [bankruptcy] plan that Hurtt and Pringle have confidence in, it could happen quickly," said one Orange County Republican. The two new leaders, however, have made opposition to government the cornerstone of their political ideologies, having opposed a local sales-tax initiative that would have helped ease the crisis.

"All it means is that we've got all three Stooges living in our county," said University of California, Irvine, political science professor Mark Petracca, adding Speaker Allen as the third "Stooge."

Of more significance statewide is the similarity of the new leaders' ideological symmetry. Hurtt and Pringle continue the steady momentum pushing the Legislature away from the middle and toward the extremes in both parties. Both are considered more confrontational than their respective predecessors, and figure to get in the Democrats' faces more often and on more issues. Moderates such as Craven worry that Hurtt's rise will prompt an "our way or else" mentality in the caucus, making it more like the contentious atmosphere in the Assembly. "I have trouble with a leadership, or a governance, based on dollars," said Craven. Aguiar's challenge in the Assembly also reflects an uneasiness on the part of some Republicans with "in your face" tactics.

"Time will tell," said Assemblyman Brian Setencich (R-Fresno), Allen's one steadfast loyalist in the Assembly. "The hope is that when you assume leadership, you will look at the big picture. It's up to Curt to prove himself."

Hurtt likewise must prove he will live up to his promise not to disrupt the Senate's traditional decorum. As the election approaches, however, both Hurtt and Lockyer may have reason to take each other on, particularly with Lockyer anxious to assert and advance his standing as the state's most powerful Democrat. Some Capitol veterans worry the Senate could wind up looking more like the raucous Assembly. "Hurtt and his crowd handed the other side a reason to resist," said one knowledgeable insider. "Now [the Democrats] have a real rationalization not to cooperate with Hurtt." Hurtt insists things won't get out of hand, but he has said there may be "longer [and] more heated debate" on policy questions under his tenure.

Those looking for a silver lining in all of this may find it in the timing of the transitions. Both Brulte and Maddy found themselves in the position of being lame ducks, thanks to term limits, and each faced pressure to move aside. Taken in conjunction with Roberti's bloodless transfer of leadership to Lockyer and even Brown's early exit from the speakership, the latest transitions suggest the Legislature may be developing an ad-hoc system for making leadership transitions in the era of term limits.

"The Legislature may be stumbling toward a pattern that says about a year before you're term limited, you step down," said Hodson. "If that's happening, then that is good. Anything that promotes stable, orderly transitions is good for the institution."

No matter how easy the transitions become, however, there is still much confrontation ahead. Term limits and the 1990 redistricting will likely make both houses partisan battlegrounds during election years, when the line between legislating and electioneering often blurs. No matter how even tempered they may try to be on the floor, there seems little doubt that the rise of "Hurtt and Curt" is a message from Republicans in the Legislature.

The battle is joined.

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Runaway crime and

When it comes to crime, the threat to California's quality of life may come more from the antics of politicians than from the acts of criminals. Laws such as "three strikes" target the wrong people and help perpetuate the misleading image of a society beset by rampant, violent evil.

By Joseph D. McNamara

It has become commonplace for national news reports to declare that California has lost its allure for many Americans because of crime and other problems. The stories typically note that California's population growth no longer results from United States citizens migrating to seek a better life in the Golden State. Now, they write, California's growth stems primarily from an increase in illegal aliens and the high birth rate of various minority groups living in California. The news accounts go on to describe an exodus of middle class Californians to "safe" states such as Oregon and Washington. Many such articles also imply that most of the cops in Los Angeles and other California cities are impatiently waiting to qualify for their pensions so they can relocate to Idaho, Montana or other crime-free utopian locations. It reminds me of what people used to say in Kansas City, where I was police chief in 1973. Any number of folks in the Heartland (and elsewhere) expressed the view that the best thing for the country would be for California to break off and sink into the ocean.

It was, and is, California-bashing, of course. Yet, the image of California as a dangerous place cannot be dismissed as mere reactions by non-Californians to mass murderer Charles Manson, the O.J. Simpson case, and other sensational California crimes. Anger about crime and the fear of victimization resonate strongly throughout the state. Determining just how much crime exists and the risk it poses to the average citizen is important, but it is a more complex task than people realize. For one thing, crime means different things to different people. And news coverage, especially television reporting, often creates more confusion than knowledge.

In addition, California almost defies definition. Geographically, it encompasses furnace-like deserts, an ocean coastline that is second to none in beauty, remote farmland, pristine mountains and lakes, vast metropolitan areas and their suburbs, and, of course, the fantasy land of Hollywood. Furthermore, various regions of California differ economically and demographically as much as do nations, and each area has distinct crime patterns as well as its own view of crime. Humboldt County, in the north, is tolerant of marijuana growers, while Palo Alto has laws against loud leaf blowers and even prohibits smoking cigarettes outdoors. In Los Angeles, cops will prone out a carload of people if they spot a single roach in the vehicle.

Section 15 of the California Penal Code provides a statewide definition, however: "an act committed or omitted

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Joseph D. McNamara was police chief of San Jose for 15 years. He holds a doctorate from Harvard and is the author of four books. He currently is a research fellow at the Hoover Institution, Stanford University.

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the end of dreams

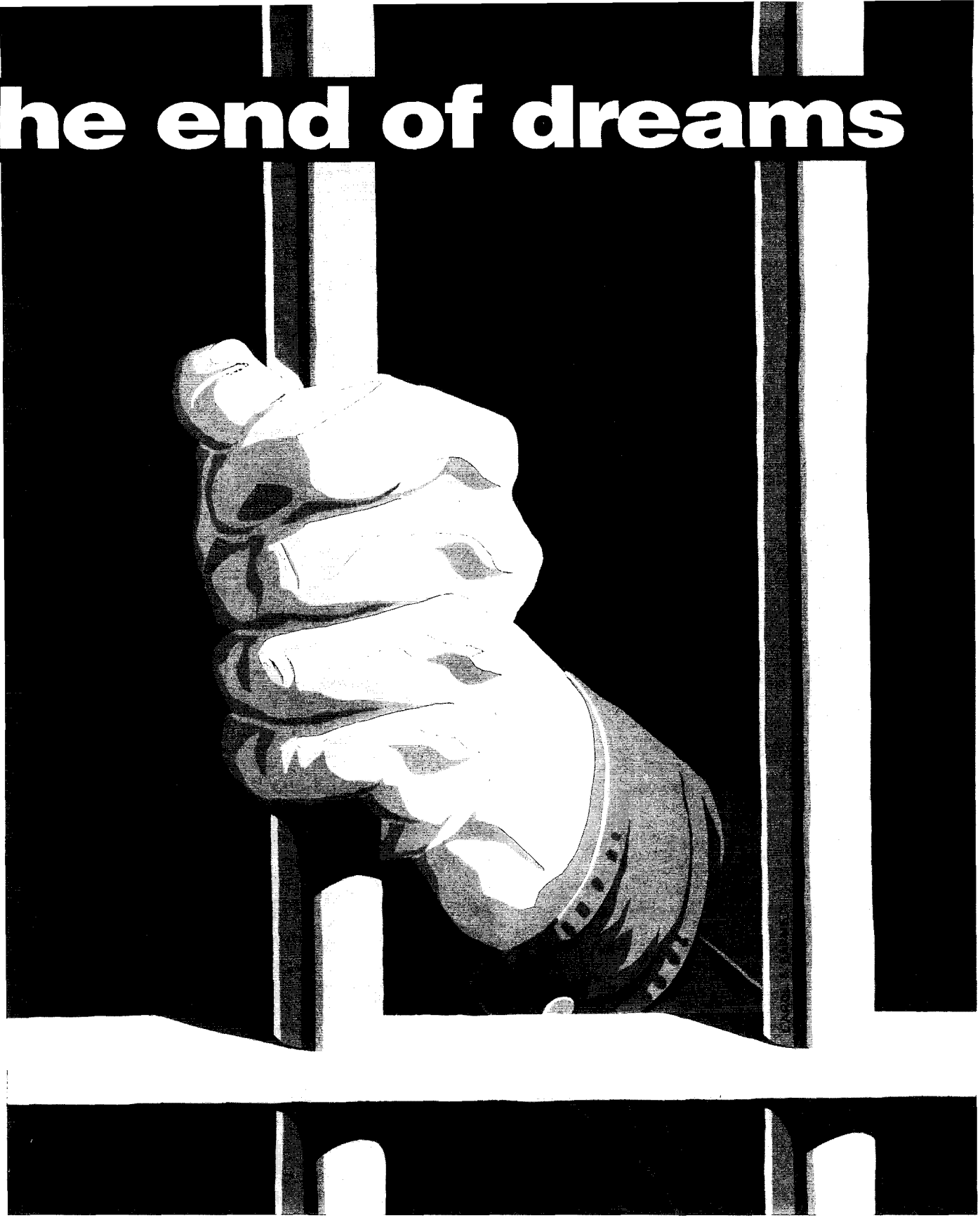

Illustration by Carol S. Barnett, Journal *cover April 1994*

[such as not paying income tax] in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, certain punishments." The prose may be turgid, but more than a million crimes a year are recorded in California under these standards. Approximately one third are classified as violent.

Californians' fear and outrage are not related to such exotic Penal Code felonies as the California superintendent of printing corruptly colluding with any person furnishing paper; or a debtor falsely concealing his property; or a person fraudulently producing an infant and falsely pretending it would be entitled to inherit real estate; or pimping; or corrupt sporting practices; or using another's license from issued by The California Horse Racing Board; or counterfeiting quicksilver stamps. The list goes on and on of non-violent petty crimes which now land

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people in prison for life as a "third strike."

Contrary to the provisions of the "three strikes" law, public concern appropriately centers around violent crimes such as murder, aggravated assault, forcible rape, robbery and crimes with high potential for violence such as breaking into an occupied home. And fear of crime during 1994 reached new heights in America. California was no exception. In fact, the horrible rape and murder of nine-year-old Polly Klaas in the low crime city of Petaluma set off a public rage greater than any crime in half a century. It touched everyone that an innocent, vulnerable child was taken from the safety of her own bedroom. When it became known months later that the person accused of the crime was a sex criminal who had been in and out of prison for 20 years, fear and anger led to bizarre and demagogic public policies such as the "three strikes" law in California and the $30 billion crime bill in Washington, D.C. Both are likely to encourage more crime and most certainly will be a greater drain on taxpayers.

Paradoxically, although fear of crime has reached an all time high, the Annual FBI Uniform Crime Reports and the Census Bureau Victimization studies both indicate that crime has been decreasing for a number of years. The latter index showed less crime than in any year since 1975, the year the studies began. For example, 32 percent of households had been touched by crime in 1975. By 1992, it had decreased to 23 percent of households. The FBI crime rate rose in many years, but recently has declined to approximately the same rate as in the early 1970s.

Still, public concern about violence is understandable. While the rate of murders and robberies and other serious crimes per 100,000 people may be the same, there are *more* such crimes because the population has grown. Also, violent crime by young people has greatly increased and is more random. In addition, improvements in news media technology have added to public awareness of crime. Each evening, television brings pictures of flashing police lights and bodies being wheeled into hospital emergency rooms or morgues. Few viewers consciously realize that these atrocities often are thousands of miles apart and that many of the victims had a lifestyle that put them in more danger than the average law-abiding citizen. The cumulative effect of TV coverage of violence creates an impression that our neighborhoods have become extremely dangerous — despite the fact that homicide and robbery rates have dropped to the 1970's level.

Interestingly, politicians and police officials everywhere have been quick to claim that their programs are responsible for crime decreases. If one scans newspapers from a few years ago, when crime seemed constantly to rise, one discovers that the same people were blameless. They attributed the increases in crime to the breakdown of the family and schools and to economic recessions. San Jose became the safest large city in America during my tenure as its police chief. When the press asked me why, I offended some officers by answering that it did not have much to do with police. San Jose had less crime because the people who live there are mostly middle-class, well educated and have jobs. They not only commit less crime but serve as mentors to youngsters tempted to get into trouble.

Recently, a man received a 25-year sentence for stealing a slice of pizza.

Given the concern about violence, people might be surprised to learn that the overwhelming majority of arrests in California and elsewhere are for non-violent offenses, and that most people in jail and prison have been convicted of a non-violent crime. Nationally, the percentage of inmates locked up for violent crimes dropped by 9 percent between 1986 to 1991. Inmates sentenced for a drug offense accounted for 44 percent of the increase in the prison population during these years. This trend can be expected to accelerate in California. Under the "three strikes" law, 70 to 80 percent of defendants being sentenced to long prison terms and life in prison have been convicted of minor non-violent crimes for the last strike. Recently, a man received a 25-year sentence for stealing a slice of pizza.

One reason for counter-productive crime control policies is that no one knows for certain why one person commits crime while another from a similar background does not. Despite the plethora of economic, sociological, psychological, biological and other theories of criminal behavior, we do not know how to prevent crime. Historically, it appears that most crime, especially violent crime, is committed by young males between the ages of 14 and 24 living in inner-city neighborhoods. In decades past, these kids came from Irish, Italian, and other immigrant groups. Presently, inner-city youngsters tend to be non-white, which further complicates reform efforts. Also, it has become clear that the increased availability of firearms has greatly increased violence among this group. The number one cause of death for young African American males is homicide, and the homicide rate for teenagers by firearms has more than doubled since 1985. Many criminologists also cite poverty, discrimination, lack of educational and employment opportunities, illegitimate births and fractured family backgrounds as factors influencing crime. Criminologist Alfred Blumstein believes that the thriving inner-city drug businesses and the easy access to firearms to youngsters in these areas is a major factor in increased juvenile fatalities.

Yet remedies remain elusive. The federal "War on Poverty" during the 1960s attempted to deal with some of these problems and "cure" the poor, but the poverty war is generally regarded as a failure that produced a backlash among voters. Similarly, sex education, family planning, and abortion — measures that might help avoid children being born to parents who will not nurture them — have become politically explosive issues. Gun control, affirmative action and other attempts to alter society also are politically volatile. It has been safer for politicians of both parties to be "tough on crime and drugs." Consequently, they have passed mandatory sentencing laws which have quadrupled the number of people in confinement over the past 12 years. Unfortunately, there is no evidence that it has reduced crime or drug use.

One thing is indisputable: Long mandatory sentences are

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expensive. The non-partisan legislative analyst estimated that "three strikes" legislation would cost billions of additional dollars for more prisons. In addition, there will be greatly increased costs for more prosecutors, public defenders, judges and courtrooms. Prior to "three strikes," more than 90 percent of the cases were settled without trial. Now, defense attorneys advise clients to fight the charges, since acquiring a "strike" conviction might result in a long mandatory prison term.

Is it time to give up and join Mark Furhman in Idaho, buy an Uzi, staff your property with armed guards, or replace the foundation shrubs with barbed wire and a moat? If you can finance these things, chances are you already live in an area with one of the lowest crime rates in the country, or can easily afford to move to a safer area of California. As for the rest of us, what the politicians and other hucksters of crime "waves" are not telling us is that most people will never be the victim of a serious crime if they take modest precautions. Of course, there is still too much crime. But in 1993, 12.9 out of every 100,000 people in California were the victims of homicide, down from the rate of 13.5 in 1980.

In 1993, in Washington D.C., where elected officials spend billions of tax dollars supposedly to prevent crime, the homicide rate was 78.5 per 100,000 citizens. In other words, the odds were six times greater of being murdered in the nation's capital than in California. And, the scenic laid-back, gourmet state of Louisiana had a homicide rate of 20.3 — almost double that of the Golden State. New York and Mississippi had rates slightly higher, while a dozen other states were close. Much the same picture emerges when looking at the FBI index of serious crimes. California is below the national average and lower than or close to large industrial states in the rate of serious crime. Moving to quieter locales may not be the answer, either. In 1994, the rate of serious crime in Lincoln, Nebraska, was rising by 13 percent while declining in California — a trend that has continued thus far into 1995.

According to 1993 reports by the FBI and the California attorney general, California's rate of serious crime is only half that of the national average. Yet, during the 1994 election, candidates for governor and attorney general — not to mention for secretary of state and the Legislature — ran on anti-crime platforms. I do not recall one politician having the courage to educate the public that "three strikes" will incarcerate many more petty, non-violent criminals than killers, rapists and robbers. Then-Speaker Willie Brown Jr. (D-San Francisco) said it for all politicians: "I see a locomotive coming down the track, and I'm not about to get in the way." Nor did politicians tell voters that the cost of jailing non-threatening criminals will take money and resources from other needs. Instead of using scarce resources to target violent criminals and big-time crooks, the criminal justice system now will focus mostly on minor criminals who could be punished by cheaper and more effective ways.

The taxes needed to pay the cost of doubling or tripling the number of inmates in California will take money from local communities and businesses, hurt their economies, lower employment, and cause injustices. For example, California criminal-justice expenditures for the 1983-84 fiscal year more than tripled by 1993-94. The major increases are not from arresting, prosecuting, and jailing more killers, rapists and robbers but from a 382 percent increase in narcotic arrests between 1980-1989, as well as from greatly increased sentences passed by the Legislature — increases occurring *before* "three strikes" became law.

The 1993 report on the Future of the California Courts warned, "...the next three decades portend a vast volume of cases for the criminal courts." The report also raises doubts about California's ability to adequately fund the courts. Certainly the same doubts exist relative to funding police and correctional agencies. The commission noted that, between 1986 and 1991, drug offenders in state prison populations rose from 9 to 22 percent and that a number of analysts had found no evidence of any significant change in overall drug use. The report went on to mention that studies done at Stanford's Hoover Institution "suggest that the principal result of the war on drugs has been the incapacitation of the courts." I, and some of my colleagues at Hoover, would have added that the drug war causes extensive violence, corruption and violation of civil rights. A growing number of scholars have urged the establishment of a national commission to find better ways to discourage dangerous drug use and to reduce the harm caused by the drug war itself. Thus far, our efforts have not been anymore successful than attempts to get politicians to tell the truth about "three strikes" legislation.

I spent 35 years in law enforcement, starting as a beat cop in Harlem and moving on to become police chief in the Midwest, and finally serving 15 years as chief of the San Jose Police Department. I feel fortunate to live in California and do not believe that fear of crime should cause people to flee elsewhere. To be sure, people in South Central Los Angeles have a great deal more to fear than those living in San Benito County, which had a zero homicide rate in 1993 compared to Los Angeles County's whopping rate of 21.1 homicides per 100,000 residents. It is important to remember that the crime rates of Brentwood, Santa Monica and Pasadena are very low compared to other parts of Los Angeles County. Similarly, Humboldt County has a homicide rate of 5 and a robbery rate of 36 per 100,000. More densely populated San Francisco County's murder rate is 17.2 while nearby Santa Clara County enjoys a rate of only 3.9, which is roughly a third of the San Diego metropolitan area's 9.2 rate.

Although crime rates are important in making policy decisions, they can create unnecessary fear because many victims of violence are engaged in those illegal activities that expose them to more risk than the ordinary citizen. This is not to suggest that victims deserve their fate, or to minimize the damage that crime has on the quality of life for victims and non-victims. But people should contact their local police to determine what the crime level is in their neighborhoods. Most police departments of any size now have sophisticated crime analysis capabilities which pinpoint the volume and type of crime on every street. The police are also more than willing to provide specific crime prevention suggestions to citizens. Since taxpayers pay for all of this, no one should hesitate to ask for information. People about to relocate or go buy expensive guns, alarm systems and attack dogs may be surprised to know that the only crime in their neighborhood within years was a bicycle theft from an open garage. The majority of burglaries are not sophisticated jewel theft capers. They take place because of an unlocked door or window.

What I fear more than becoming a crime victim is what the Legislature may do to our tax rate to pay for building a prison state that locks up the wrong people. Ironically, if individuals and businesses flee to areas with lower taxes, the dire predictions of crime war hawks in California may come to pass.

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The clutter in criminal law

California's criminal law has become so Byzantine that some prosecutors and judges are having trouble keeping pace with changes.

By David R. Ross

"As a sentencing judge wends his way through the labyrinthine procedures of [the determinate sentencing law], he must wonder, as he utters some of its more esoteric incantations, if, perchance, the Legislature had not exhumed some long departed Byzantine scholar to create its seemingly endless and convoluted complexities. Indeed, in some ways it resembles the best offerings of those who author bureaucratic memoranda, income tax forms, insurance policies or instructions for the assembly of packaged toys."

So observed Justice Robert Gardner in *Community Release Bd. v. Superior Court* (1979) less than two years after the enactment of the Determinate Sentencing Law. Since then, that law has continued to become more complex, and at an alarming rate.

Criminal law prohibits narrowly defined activity. The courts, in turn, strictly construe that activity so as not to punish deeds unless they are specifically defined. Typically, California felonies, with the exception of serious crimes that require a life sentence, provide for three sentencing choices when prison is imposed. The purpose of this triad is to punish egregious conduct with the upper term, the mitigated case with the lower term and the average case with the middle term. California Rules of Court set forth general principles for aggravating (or mitigating) factors.

Most California crimes evolved from English common law and took centuries to develop. Most "new" crimes are variations of existing offenses and fit into the framework of the common-law crimes. For instance, felonies such as computer theft and carjacking are added to keep up with the times. In the past, the most common additions to the Penal Code created new crimes or added degrees of severity to crime already on the books.

But in recent years, the Legislature has responded to increased public concern over crime by creating three new concepts: circumstances in aggravation, mandatory sentencing and enhancements to crimes. The proliferation of these concepts has cluttered the law with such specific, fact-based provisions that few legal professionals are able to comprehend them.

Concerning circumstances in aggravation, the Rules of Court are general and broad. For example, a circumstance in aggravation occurs when a "crime involved great violence, great bodily harm, threat of great bodily harm or other acts disclosing a high degree of cruelty, viciousness, or callousness" (Rule 421[a][1]). A circumstance in mitigation occurs when "[t]he

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David R. Ross has been a Los Angeles County deputy district attorney since 1971. He is deputy-in-charge of the Florence/Firestone Area and is chairman of the crime charging committee of the California District Attorneys Association.

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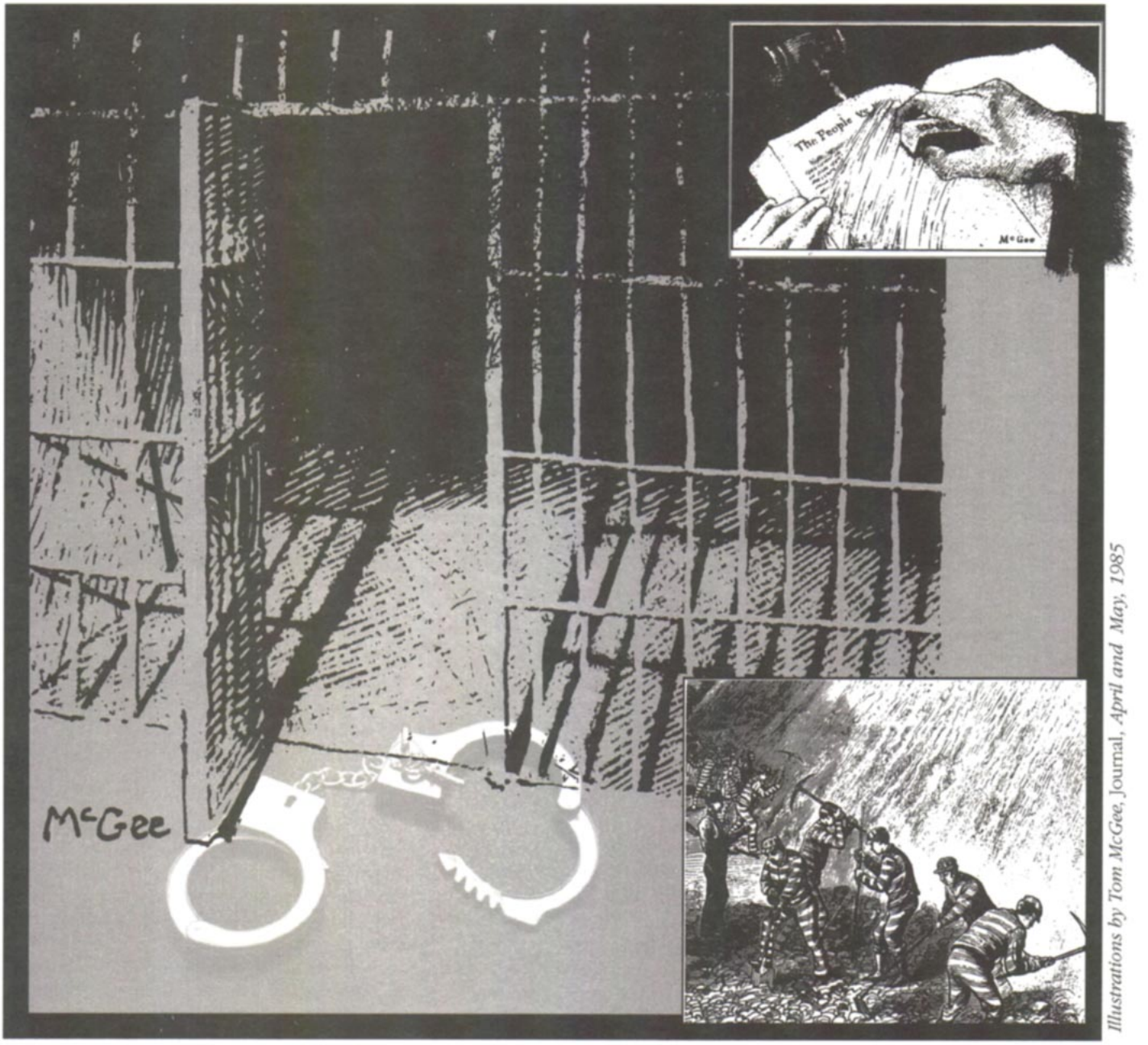

Illustrations by Tom McGee, Journal, April and May, 1985

defendant was a passive participant or played a minor role in the crime" (Rule 423[a][1]). Starting in 1981, the Legislature has attempted to be more specific in describing "aggravation" by adding at least a dozen Penal Code sections. Robbery of a pharmacist for the purpose of obtaining drugs, for instance, is a circumstance in aggravation of a robbery. Other sections of the Penal Code provide other aggravating circumstances, as do sections of the Health and Safety and Vehicle codes. Most of these specific "circumstances in aggravation," however, fit into the general descriptions contained in the Rules of Court and thus are not necessary.

The most famous mandatory sentencing provision is "use a gun, go to prison," enacted by the Legislature in 1975. This section prohibits probation for persons who use a firearm during the commission of a number of specified crimes. The constitutionality of mandatory sentencing was upheld in *People v. Tanner* (1979); the Legislature since has enacted at least a dozen similar provisions.

Enhancements are a different matter. In 1985, lawmakers turned their attention to sentence enhancements after a pregnant woman from Ventura County was struck in the abdomen, causing her to abort. The Legislature created a five-year enhancement for inflicting injury upon a pregnant woman which results in termination of the pregnancy. At the time, a three-year enhancement for intentionally inflicting "great bodily injury" during the commission of any felony already existed. This law did not mandate prison; it merely said that if a felon is sent to prison on the underlying crime — robbery, for example — then he or she may get another five years for inflicting injury on a pregnant woman if the sentencing judge thinks the culprit deserves it. Thus, the enhancement is not mandatory.

Enhancements have become legislators' darlings. They can be factually tailored to address high-profile crimes, require a conviction on the underlying charge and for the most part do not require any mandatory type of sentence.

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Currently, there are over 75 specific enhancements, with several more pending in the Legislature.

To complicate matters, enhancements themselves are divided into three categories: criminal history, victim status and conduct.

Criminal history, as the name suggests, involves "priors," and enhance a sentence from one year to life (the three-strikes law) for certain previous convictions or for already having served in prison. These are the most common enhancements, although over a score more are scattered throughout the various codes.

Victim status enhances a sentence based on the victim's race, color, religion, nationality, country of origin, ancestry, disability or sexual orientation. So-called "hate crimes" fall into this category. One to four years may be tacked onto a sentence because of victim status, and this section is always ripe for amendment because it focuses on specific groups of people for protection — and, one presumes, for votes. There are several bills proposed each year to add such categories as "immigration status," "senior citizen status" or whatever victim status was the focus of the most recent heinous crime. In 1994 some lawmakers sought to add "economic class" and "homelessness" to the statute, but their efforts failed.

"Conduct" involves the largest category of enhancements. There are scores of them, but the most widely known is using a firearm during the commission of a felony. This may add three, five or 10 years to a sentence. It is worth noting that "use of a gun" is both a mandatory prison crime *and* an enhancement — and the enhancement is mandatory if prison is imposed, a concept confirmed in *People v. Thomas* (1992).

Why so much clutter? Basically, the Legislature lost faith in the ability or desire of the judiciary to impose severe enough penalties for a variety of crimes. As a result, lawmakers have restricted the sentencing discretion of judges. When the 1982 Proposition 8 created a five-year enhancement for a prior conviction of a "serious felony," the Rose Bird-led California Supreme Court held in 1985 in *People v. Fritz* that the enhancement was not mandatory. The legislature responded by making the enhancement mandatory. As noted above in *Tanner*, the "use a gun, go to prison" provision was made mandatory. Now, the discretion to be lenient in three-strikes cases is being litigated because some judges believe that the punishment is too harsh.

Prior to 1977, most crimes carried a potential life sentence under the indeterminate-sentencing law. An appointed commission, now called the Board of Prison Terms, would set terms after the defendant was committed to the Department of Corrections "for the term prescribed by law." This didn't work out because a nameless, faceless, non-accountable commission was setting extremely low terms. The Legislature responded in 1977 with the present determinate-sentencing law, which creates specific terms — generally triads — and the judge sets the actual sentence based on those terms.

Since 1977, the number of specific statutes — new crimes, new degrees of crime, circumstances in aggravation, mandatory sentencing provisions and enhancements — has exploded, primarily in the Penal Code.

Legislators perceive that laws are self-enforcing, that the mere enactment of laws punishes and deters crime. The perception is incorrect. Before a particular enhancement may be imposed when a convicted felon is sentenced, it first must be alleged in the original complaint against the suspect, and proved during a prelimiary hearing. Mandatory prison provisions likewise must be alleged and proved. Consequently, a prosecutor must *know about* them. Given the ever-increasing number and complexity of enhancements, experienced and knowledgeable prosecutors are necessary. Unfortunately, tight budgets and a retreat from a policy of retaining career prosecutors has hurt because inexperienced prosecutors don't often allege the circumstances that could lead to enhancements or mandatory sentences. Thus, a legislator's intent is not merely thwarted, the exact opposite situation may occur: the failure to impose a tough provision results in leniency because the prosecutor was unaware of the provision in the first place. This might appear as a weak excuse coming from a prosecutor, but the entire body of sentencing law — including crime-charging, which is inextricably intertwined with sentencing — is incredibly complex. In three recent and important sentencing decisions from the California Supreme Court, defendants received a lower sentence than possible because the prosecutor failed to make proper allegations.

In defense of legislators, most do not know about the complexities they create. Most are not criminal lawyers and have no idea of how difficult it is to have knowledge of, to plead, to prove and to impose the results of their legislative desires.

What should be done? Review, revise and simplify the Penal Code. Crimes, enhancements, manda tory sentences and other concepts should be simplified, easy to find and understand, and easy to apply. A commission could accomplish this without making substantive changes in current law.

Legislators should read the California Rules of Court before proposing new circumstances in aggravation. If they read them carefully they'll see that the rules already are quite comprehensive. Dealing with mandatory sentencing is a little more difficult. Obviously, probation in many cases is appropriate. Historically, however, wide judicial discretion has proved to be ineffective when it comes to punishing crime. The pressure to be lenient is too great. Lifetime judicial appointments might help, but the price to be paid for that might be too high. Still, even federal judges have to be told by Congress that some sentences are mandatory. Short of a complete revision, the Legislature should decide what types of crimes really warrant prison — use of weapons and infliction of injury are two such concepts — and set up a comprehensive scheme.

Enhancements, much like the mandatory sentencing, should be reviewed, reduced, simplified and placed in one or two sections of the law rather than scattered throughout a dozen codes. The concept of special victims should be abolished. If one is a victim, what does it matter the age, sex, race and so on? The concept often is difficult to prove and ultimately places some citizens' status above that of others. The Rules of Court on circumstances in aggravation can cover this concept.

Legislators must show leadership, vision and perspective. This "crime of the month," "enhancement of the month," "sentence increase of the month," "mandatory prison provision of the month" and "new degree of crime of the month" is making the criminal process complex beyond the comprehension of virtually everyone in the criminal justice system.

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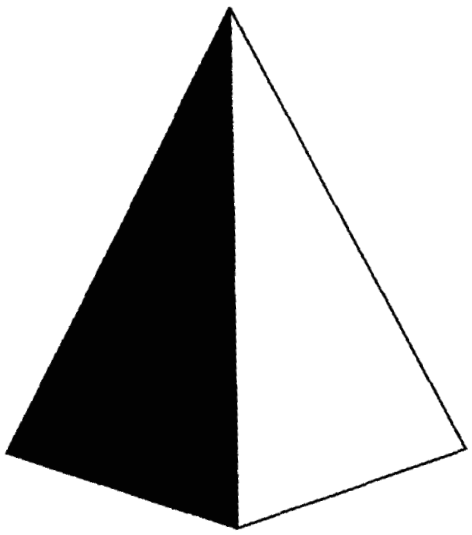

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October

11 Working the State Budget—Your Programs and Projects Can Survive the Process
Sacramento

12 Demystifying the Legislative Process
Sacramento

18 Bill Tracking & Analysis
Sacramento

19 Surviving State Rules and Regulations
Sacramento

20 Winning Communication Strategies—How to Be Persuasive and Effective in Legislative Relations
Sacramento

November

1 The Legislature and You: The Government Official's Guide to Process, Tracking, and Capitol Access
Ventura/Burbank Area

2 The Legislature and You: The Government Official's Guide to Process, Tracking, and Capitol Access
City of Lakewood (Central to all of Los Angeles Area)

3 The Legislature and You: The Government Official's Guide to Process, Tracking, and Capitol Access
El Toro, Orange County (Easy access from Inland Empire & San Diego)

10 Bill Tracking & Analysis
Sacramento

16 Surviving State Rules and Regulations
New in Los Angeles!

17 Budget Basics
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December

6 Bill Analysis Workshop
Sacramento

7 Winning Communication Strategies—How to Be Persuasive and Effective in Legislative Relations
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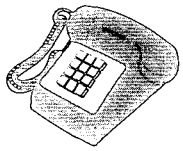

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November
- ☐ 1 The Legislature and You: Government Official's Guide
- ☐ 2 The Legislature and You: Government Official's Guide
- ☐ 3 The Legislature and You: Government Official's Guide
- ☐ 10 Bill Tracking & Analysis
- ☐ 16 Surviving State Rules and Regulations
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- ☐ 6 Bill Analysis Workshop
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The Bottom Line

GOVERNMENT FINANCE

By Susan Rasky

Labor's love lost

What do you say to a once mighty constituency whose absolute numbers are dwindling and whose loyalty to the Democratic Party has been waning since the days of Richard Nixon? If you're Bill Clinton, looking to shore up ties to organized labor and at the same time hold on to those precious 54 California electoral votes, the answer, it seems, is not a lot.

How else to explain the carefully crafted, yet ultimately tepid campaign speech the president delivered at last month's annual Alameda County Labor Day picnic? And how else to explain the friendly, but by no means enthusiastic reception Clinton got from the array of teamsters, service workers, carpenters, health-care employees, machinists and such whose sense of shared purpose now seems little more than the fact that they all pay union dues?

It was a speech designed not to arouse but to avoid offending. And it's a safe bet that if Jesse Jackson and retiring U.S. Senator Bill Bradley weren't lurking in the 1996 background, Bill Clinton might have skipped the Alameda County picnic altogether and stayed in Monterey to play golf.

True, the crowd of more than 10,000 was many times larger than it has been in years at the traditional gathering of union families and Democratic politicians. If nothing else, that should be a reminder to both Clinton campaign strategists and the AFL-CIO leadership that the power of presidential incumbency counts for something.

Voters may tell the pollsters that they are angry and cynical about their government or their political leaders, but average folks apparently still think it's kind of thrilling to get an honest-to-god glimpse of the man who occupies the White House. Hallelujah! Maybe the republic ain't dead yet.

On the other hand, a few rounds of knee-jerk applause for the president's oh-so-bold call to boost the $4.25-an-hour minimum wage hardly ensures either logistical support from the unions or labor votes at the ballot box come November 1996. ("Yes, Martha, I'm going with Clinton because he wants to raise that minimum wage.")

Teamsters, who provided crowd security for the speech and looked for all the world like Hell's Angels at a rock concert, certainly found nothing to woo them back to the Democratic fold. "Lady," one burly truck driver several years from retirement confided to a reporter as the president spoke, "if there's a dog running against this guy, I'm voting for the dog. Clinton just hasn't been there for us."

It is worth noting that this teamster and other union members who seemed to share his views were hard pressed to cite an issue other than Clinton's support for the North American Free Trade Agreement on which the president had not been solidly in labor's camp.

Indeed, the labor leaders who preceded the president on the podium seemed to recognize that their own bungling has helped create the gross misimpression among the rank-and-file about where Clinton stands. One by one, they reminded the crowd that Clinton has been the most pro-labor president in decades, and as AFL-CIO President Thomas Donahue bluntly put it, the only thing standing between the Republican Congress and the complete dismemberment of labor's agenda is Clinton's veto pen.

If labor's rank-and-file doesn't quite yet comprehend that, there are signs, in both Washington and Sacramento, that a new generation of labor leaders not only understand but are finally ready to develop an organizing strategy that goes beyond hand wringing. Asian immigrant workers in the needle trades, Hispanic immigrant workers in the construction industry and white-collar workers in the burgeoning health-care and telecommunications industries — all provide ample opportunity for enlarging and renewing the labor movement.

Later this month, John Sweeny, head of the Service Employees International Union, is likely to beat Donahue in the election for president of the AFL-CIO. Sweeny has pledged substantial financial, and perhaps more important, human, resources to national field organizing on behalf of the Clinton campaign.

In Sacramento, next summer's retirement of Jack Henning, the long-time head of the California Federation of Labor, paves the way not only for new ideas and new blood at the helm of California's labor movement, but also for a reassessment of political strategy. In a Legislature where full Republican control is a very real possibility, California's labor leaders no longer have the luxury of negotiating only on their own terms.

For months now, officials from some of the state's more innovative and politically savvy unions have been meeting quietly, but regularly with business groups, particularly the real-estate developers, to scope out common ground on broad policy issues like taxes, education and health-care reform.

Does that mean organized labor and California business leaders suddenly join hands and sing Woody Guthrie songs on the steps of the state Capitol, or that Don Novey and the prison guards start putting their financial muscle behind Democratic candidates? Hardly.

But it does mean that if organized labor in California and across the country fails to turn its current adversity into political opportunity, tepid speeches from cautious Democratic candidates will be about all that America's working men and women can expect in the next election cycle and for a long time to come.

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Three strikes after

Proponents claim that the three-strikes law has lowered the crime rate without swamping state prisons. But county law-enforcement officials say they are awash in defendants — a river of human criminals that promises to flow into prisons soon enough.

By John Borland

Had the brutal kidnapping and murder of Petaluma's Polly Klaas by a paroled felon happened 150 years ago, odds are there would have been a lynching. California may be more measured than that today, but outraged citizens still needed something to assuage their fear and anger. They got a law.

In the wake of the Klaas affair, the idea of putting repeat offenders behind bars for life swept the state, embodied in a concept called "three strikes and you're out." A law to that effect passed both houses of the Legislature in 1994, and appeared on the 1994 ballot as Proposition 184. It was a sign of the times that a three-strikes bill carried by Assemblyman Richard Rainey (R-Walnut Creek), a former sheriff supported by the District Attorney's Association, failed because it applied only to violent acts and thus was labeled insufficiently "tough on crime." The successful version, authored by then-Assemblymen Jim Costa (D-Fresno) and Bill Jones (R-Fresno), put criminals behind bars for 25-years-to-life for *any* felony, provided the perpetrator had two prior violent or serious convictions. Governor Pete Wilson, then anchoring his nascent re-election campaign with square-jawed crime credentials, signed it into law.

Nearly lost in the acclaim were cries that the law would boost the prison population to a level far beyond what the state could afford. Based on Department of Corrections figures, the Legislative Analyst's Office estimated that 25 new prisons would be needed to hold the 80,000 new prisoners projected to enter the system by 1999, just to maintain current levels of overcrowding. But the prison population has not skyrocketed as quickly as expected. The LAO has downgraded its estimation of prison construction to a

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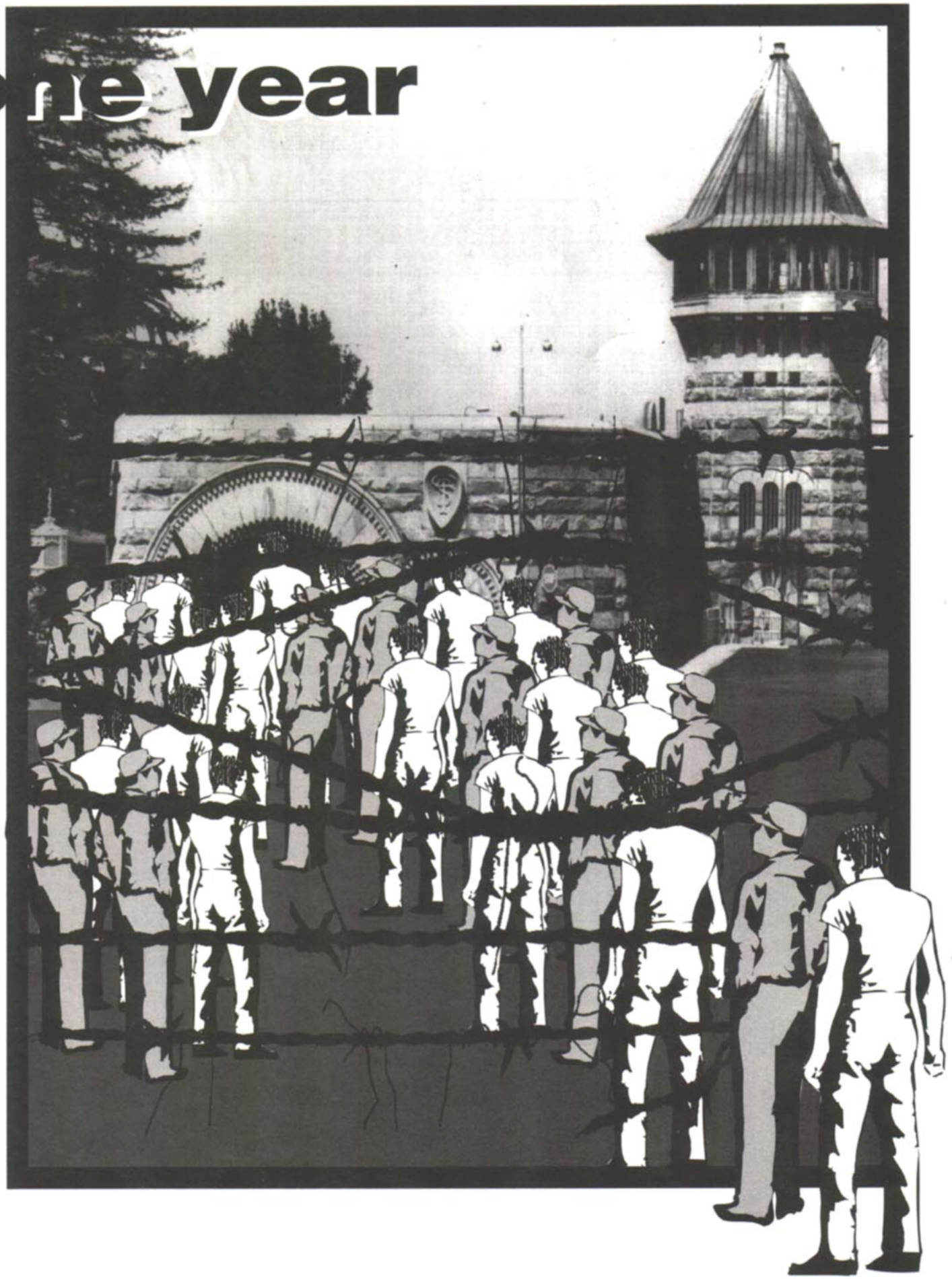
one year



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We do have ... periods of time when we have to borrow a few civil judges.

— Judge Joan Weber

mere 15 new prisons over the next five years — surely no easy task but marginally less Herculean than the original charge.

Attorney General Dan Lungren's office trumpets a significant reduction in the California Crime Index, the measure of reported crimes committed in the state over the course of a year. "There were 57,000 crimes prevented in the first year," says Fresno photographer Mike Reynolds, the guiding spirit behind the three-strikes proposal. Reynolds' adult daughter was slain by a repeat offender during an attempted purse-snatching, prompting her father to make three-strikes a personal crusade. "That's with no cost of incarceration, no prosecuting costs, and most of all, no victims." Reynolds, along with Wilson and Lungren, publicly attributes the drop almost entirely to the preventive effect of three strikes, an assertion questioned by professional criminologists.

But if prisons have not yet borne the brunt of the law, it may be due largely to logjams at the county level. Trial courts around the state are accumulating a towering backlog of cases. In some areas, civil courts have had to be commandeered in order to fulfill defendants' constitutional rights to a speedy trial. Jails are filling with three-strike suspects waiting for their trials, leaving little room for those charged with lesser offenses. The county-level justice systems that serve as the gateway to state prisons are staggering underneath the burdens of the three-strike caseload.

When Westwood attorney Tom Dempsey received a court date last May, he expected that the case, on behalf of a client who had bitten into a sharp piece of metal hidden in a salad, would come up soon. He was wrong. He waited for six weeks as his scheduled courtrooms and jurors were continually shunted towards "strike" cases. The waiting eventually became too expensive, and Dempsey and his client settled. "It was a very good case," Dempsey says. "We just couldn't get started."

Stories like Dempsey's are growing in number across Los Angeles County, according to presiding Superior Court Judge Gary Klausner. Branch courtrooms in Pomona, Long Beach and Torrance have stopped hearing civil cases altogether. The downtown Los Angeles civil courthouse, equipped with only minimal security provisions, has had to take on hundreds of cases involving third-strike, gang-related, or otherwise potentially violent defendants.

The problem is this: Before the passage of the three-strikes law, less than 5 percent of felony cases went to trial, mostly because defendants were willing to plea bargain a lesser sentence. But facing life in prison, nearly 75 percent of third-strike defendants, and 50 percent of first- and second-strike defendants are demanding full jury trials. About 3100

The prison-industrial complex

The growing inmate population means jobs and boom towns

By Phoebe Gifford

Crime *does* pay. At least it does in California for those folks — industries and workers — that make up what might be called a "prison-industrial complex." These are the folks most able to capitalize on the rapidly increasing inmate population and the growing incarceration system of state prisons and county jails.

Since the mid-1980s, 18 new prisons have been built, bringing the number of California correctional facilities to 31. While a second building at Soledad is the only prison currently under construction, there is another at Corcoran slated to begin in the future. There are no other prisons scheduled for construction, yet there are alterations being made to existing structures so that emergency beds may be added. It may not seem like a lot in terms of expansion, but it does generate new business as the California Department of Corrections (CDC) attempts to house those already incarcerated and make room for those expected to enter a system that already operates at 180 percent capacity. This does not include construction on various county jails, including new facilities in Sacramento and San Joaquin counties, to mention only two.

Construction companies profit the most. The cost of building a medium- to maximum-security state facility averages just under $300 million. According to Ernie VanSant, chief of construction with the support branch of the Depart-

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third-strike cases had been filed in Los Angeles by the end of August, along with more than 20,000 second- and first-strikes. In the law's first year of operation, these strike cases made up only 23 percent of felony cases filed, but soaked up nearly 80 percent of Los Angeles' felony trials, according to the county Bench-Bar Coalition. Add in the fact that strike cases tend to take slightly longer to try than ordinary jury cases, Klausner says, and the county's criminal-court system becomes hopelessly overwhelmed. "We need an additional 30 judges just to stay even," he says.

While the situation is far worse in Los Angeles than in other parts of the state, other courts report similar symptoms. Santa Clara County has reassigned three judges from split duty to solely criminal cases as a result of their strike load. San Diego is keeping up with its caseload, according to presiding criminal Judge Joan Weber, but the county has brought in a number of retired judges to help and has assigned three judges to work full time on three-strike cases. Even with these measures in place, Weber says, "we do have ... periods of time when we have to borrow a few civil judges."

The rise in caseloads comes at a time when judicial resources are already strained. County money appropriated by the state in recent budget agreements was supposed to be partially returned through state funding of 75 percent of trial-court costs. That level remains stuck in the mid-30s. Several years ago, the state Judicial Council recommended that 61 new judges be added statewide to keep up with growth in the population and crime rates. There have been no such additions.

"We're here ... to carry out the will of the people," Klausner says. "If the people and the state want three strikes, then we say that's fine, but they have to realize that we need 'x' number of resources." Without those resources, he says, courts will begin to fail those who need civil justice: small businesses, tenants and landlords, spouses seeking restraining orders and more. "What worries me is when people begin to feel they don't have access to the courts, that they have to go to [private alternatives]. If you're rich, fine; if not, tough, go to the streets." Three strikes can work, Klausner says, but only if there is more support for the courts. "Don't give me a hammer and tell me to build a house."

If it continues to grow, the easiest way to get out of jail is going to be to get sentenced.
—Merced Sheriff Tom Sawyer

Predictably, the backup in the courts is washing upstream into county jails. Originally envisioned as little more than holding pens for nonviolent offenders sentenced to less than a year of imprisonment, jails have gradually come to look more like their prison cousins. Part of this change is simple population pressure: Even though 28 of the state's county jails are under court-ordered population caps, the three-strikes influx has slightly speeded the rate of increase in the total number of prisoners, according to a January survey of jails

ment of Corrections, it is a very competitive business. Each prison project has 12 "bid packages" for which contractors compete, and three to a dozen companies bid for each package. Contractors who win one of the packages then hire subcontractors, who provide even more jobs. After the facility is opened, CDC imports 50 percent of its corrections workers in to the area but tries to hire the rest from the community. The new jobs vary from corrections officers to teachers to garbage collectors to cooks.

This influx of money in a community can transform a city. With the transplanted corrections officers comes the need for housing and often new or expanded schools. Since 1992 the CDC has given school districts a mitigation fee of $2 million so that it can better serve the students when a new institution is built. The state has only had to shell out the money in a few cases and has not given any fees retroactively. Sandy Silberstein, a lobbyist for the Coalition of Prison-Impacted Schools, argues that the CDC should also be giving this money to areas that are only expanding and remodeling current facilities.

A new prison can also affect the school district by luring teachers away from the public schools. Dr. Norm Guith, superintendent of the Palo Verdes school district in Blythe, said that he knows of at least a half dozen teachers who have left to work in prisons. The big incentive, said Guith, is the pay, which starts at $39,300 a year. Guith says the other enticement is a smaller class size and the fact that teachers "have guards with guns and billy clubs protecting them..." While the teaching opportunity may be beneficial to the instructor, the local public school system loses good teachers.

Building a new prison also increases a city's chances for expansion. A prison means increased business, new jobs and new housing. Jeffrey Thompson, a lobbyist with the California Correctional Peace Officers Association, said that "for every thousand beds, there's $11 million in local payroll," money that will boost an area's economy. According to Christine May, an information officer at the Department of Corrections, most communities with prisons experience an economic upswing. She said that with the increased buying power of the corrections workers, shopping centers, fast-food franchises and retailers such as K-mart move in to the area. "It's a growing community with an increased buying power."

The growing numbers of California's incarcerated also have produced a lucrative industry built around manufacturing goods to sell primarily to the county jails. Edie Kello, a spokeswoman at the Bob Barker Company, said that the growing inmate population has allowed business to expand over the past 20 years. "It's given us job security," she said. Selling footlockers, steel toilets, beds and other items is a competitive business nationwide and one that Kello does not see diminishing in the future.

The rate at which inmates are entering the prison system is not slowing, making some feel secure in their jobs. And although prisons may seem like large, sterile institutions, some communities and businesses see them as a chance for economic growth.

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taken by the Sheriffs' Association and the state Board of Corrections. Only a few counties have had the funds to add jail space recently; more common, as found in Los Angeles, is space unused due to the inability to fund operating costs.

Even more significant, many sheriffs say, is the changing nature of the people behind jail bars. The January survey found that the percentage of inmates awaiting trial, as opposed to those already sentenced, had risen from a historical average of 50 percent to more than 60 percent. That ratio is now close to 80 percent in some county jails, and shows no sign of leveling off. Many jails are no longer accepting suspects charged with misdemeanors, are releasing virtually anyone who is not a violent felon, or are telling police to simply skip arresting low-level offenders. "If it continues to grow," says Merced County Sheriff Tom Sawyer, the chairman of a statewide panel examining the effect of three strikes on county jails, "the easiest way to get out of jail is going to be to get sentenced."

As with the courts, the problem seems to be worse in Los Angeles County, where Sheriff Sherman Block recently drafted regulations barring almost all new misdemeanants from the jails. Block has also had to close several jail facilities due to county budget cutbacks, further curtailing available space. "We predict that very soon we will have an all-felon jail," he says. Even with some budgetary relief, he adds, the pre-trial population of three-strikes offenders will continue to force releases of sentenced prisoners long before their time is up. "The people who used to be in the county jail are on the streets," Block says. "The people who used to be in state prison are in the county jail. And the people in state prison — you have the worst of the worst there."

The gradual rise in violent offenders has pushed jails to increase security measures. "We're getting individuals in for their second or third strike that essentially have nothing to lose," says Imperial County Chief Deputy Sheriff Michael Hackett. "Why should they worry about following internal rules? They ask, 'What are you going to do, send us to prison for life?" The only way to maintain order, Hackett says, is to "run a less kinder and gentler jail than in the past."

Closely related to the level of court and jail crowding is the way in which county district attorneys treat the policy of wiping prior offenses from the records of the accused. The law says this is to be done only rarely. Counties like Los Angeles, which takes this dictum very literally, thus wind up with a heavy stream of defendants lacking any incentive to plea bargain and speed their cases through the system. Counties such as Alameda, where the district attorney is more liberal in wiping priors, manage to resolve more cases and have substantially lower backlogs in the jails and courts.

Rainey is now carrying several bills that would modify the three strikes law, one of which would standardize district attorneys' decisions on when to ignore prior offenses. He hopes this will reduce some of the pressure on the overburdened county systems. But unless this passes, or until more money is put into the system, judges and sheriffs see little hope of relief. "Right now, it's just like being in a river coming out of the mountains," Sawyer says. "And there's a lot of runoff."

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CALENDER OF STATEWIDE PROGRAMS 1995-1996

Capitol Focus is a Sacramento-based nonprofit organization that provides a variety of stimulating nonpartisan political awareness programs for California citizens and youth. Local businesses, elected officials and service clubs; school districts, individuals and parents; and statewide corporations and associations who support youth and good government are encouraged to sponsor participants to our statewide programs from the school or community of their choice. Programs fees, which have remained fixed for several years to encourage participation, include lodging, two meals a day, and program materials, but do not include transportation to Sacramento.

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The Arming

As handgun homicides increase, lawmakers battle over how be ban handguns. Others want to make concealed weapo

By John Borland

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# of California

o deal with this disturbing trend in violent crime. Some want to vailable to all law-abiding citizens. Meanwhile, guns are everywhere.

In tiny Isleton, set quietly in the southwest corner of Sacramento County, Police Chief Eugene Byrd has found a sure-fire way to put his town's name on the map and the town's books closer to the black. In most portions of the county it is difficult to procure a license to carry a concealable weapon. The permits must be issued by a local police chief or sheriff, who often raise such arduous barriers as proving a need to have such a license. Some jurisdictions add requirements such as costly liability insurance or make applicants undergo psychological tests at their own expense.

Not in Isleton. Chief Byrd has made it known that he will issue permits to just about anybody who is honest, who isn't a felon, and who lives in the county. He has a waiting list for the permits of close to 6000 people, more than six

Illustrations by Mike Tofanelli

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Pro-gun people want greater access to guns for defense, and gun-control advocates want stricter control.

times the population of the city. And close to a third of Isleton's projected 1995-1996 budget is supported by Byrd's prediction that he will issue around 700 permits this year, at $150 a pop.

"The Second Amendment says that there's a right to have, not that you need to have," Byrd says. "I don't see that [it] has been repealed." He has never had a problem with the law-abiding citizens who are legally issued weapons permits, he says, and he staunchly defends their right to defend themselves, at home or on the streets, with a gun. "When you take firearms away from honest citizens," he says, "there's going to be crime."

It may not come as a surprise that Sacramento County Sheriff Glenn Craig is upset about Byrd's actions. "I'm concerned that a lot of people not able to get a permit from us are going to him," Craig says. He cites one case in which a suspect in a county burglary case, who had three drunk-driving arrests, was denied a permit by the county, went to Isleton, and was approved there. "[Byrd] has at most 1000 people in his community," Craig says. "And he's decided that he knows what's best for all of Sacramento County. I don't think that's ethical conduct."

On one level, this is little more than a turf war between Byrd and Craig. But the two voice opposing sides of what is shaping up to be one of the biggest firearms legislative battles of the next few years. The National Rifle Association has identified the push for "right-to-carry" concealed weapons laws as its highest priority, seeking to join California with the 29 states where law-enforcement agencies must show why an applicant *shouldn't* be able to carry a gun, rather than the other way around. "This is moving across the country," says National Rifle Association California liaison Steve Helsley. "It's here now."

The battle also showcases an even broader war over gun control in California as the state approaches a crucial point in its history of gun laws. If the generally firearms-friendly Republican Party now controlling Congress and the state Assembly also takes over the state Senate, it will usher in a political climate more sympathetic to the arguments of the NRA than to the gun-control lobby. If the GOP fails in the Senate, the state is likely to stay deadlocked, or perhaps slip slowly back into the control-oriented climate of past decades. But until both houses of the Legislature are controlled by one party or the other, any piece of even marginally controversial firearms legislation will be stuck in a holding pattern around the Capitol dome. "The last session has been, 'They throw one out, we kill it, we throw one out, they kill it,'" says Sandy Cooney, western regional director of Handgun Control Inc.

"It's a stalemate," agrees state Senator Tom Campbell (R-Saratoga), one of the few Republican legislators willing to carry gun-control bills. "You can't get gun control out, and you can't get concealed weapons through." The issue's volatility prompts lines in the sand even on minor bills, he says. "Even something relatively innocuous would be viewed in its larger context."

Most of the heavy skirmishes now center on handguns, which were used in more than 60 percent of California's 3700 homicides last year. The good news is that the total number of such killings dropped slightly in 1994, according to state Department of Justice statistics. But this must be put in context: Handgun homicides nearly doubled, from 1332 to more than 2600 between 1988 and 1993 — a considerably higher rate of growth than for murders overall. "Homicide rates among most groups didn't go up," says University of California, Berkeley, law professor Frank Zimring. "But for kids [18 to 25 years old] it went through the roof." The rate of gun homicide in this particular group tripled, he explained.

This disturbing fact has produced two predictable results: Pro-gun people want greater access to guns for defense, and gun-control advocates want stricter control. Firearms advocacy groups estimate that nearly half of California households already contain at least one gun. "It isn't a matter of people getting guns anymore. People have guns," says former state Senator H.L. Richardson (R-Arcadia), founder and chairman of the board of directors of the Gun Owners of California. "In the last few months, the gun market has ground to a halt. The market is saturated."

This slowdown, however, comes shortly after what amounted to a nationwide gun-buying spree after the debate and passage of the federal Brady bill, which requires that handguns be registered and that buyers wait five days before claiming their purchase, and the Clinton/Feinstein assault-weapon ban. "[President Bill] Clinton has been the best thing in the world for

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gun sales," the NRA's Helsley says. The debate over the dangers of having assault weapons on the street scared people into buying guns for protection, aside from the push of gun enthusiasts to buy what they wanted before the laws passed, he says.

Ironically, it seems that neither the Brady bill, since it is less strict than pre-existing California law, nor the assault-weapons ban are having much effect in this state. The federal ban, like the 1989 Roberti-Roos state ban before it, leaves loopholes enough that the banned guns or their near-likenesses remain easily available. "All of these guns are still for sale. They never stopped being for sale," Helsley says. A quick look into a gun catalog or gun store backs up his assertion. Magazines may hold fewer bullets, and there may be fewer options — such as flash suppressors, grenade launchers or bayonet holders — but the basic semi-automatic guns are still for sale.

But Handgun Control's Cooney vigorously defends the federal laws, pointing out that 45,000 people in states without waiting periods or background checks have been stopped from buying guns. He also notes that the price of pre-ban assault weapons has gone up threefold. "No one ever said it was a panacea," he says. "No law is perfect."

On the state level, most of the current session's gun-control measures have come from urban Democrats, largely from Los Angeles. The most prominent of these was an attempt by Senator Richard Polanco (D-Los Angeles) to ban the manufacture of "Saturday Night Specials," a category he defined as cheap, poorly made handguns disproportionately used in the commission of crimes. The bill died in the Assembly Public Safety Committee after the failure to gain last-minute support from Assemblyman Richard Rainey (R-Walnut Creek), a moderate former sheriff. "It really took into consideration a lot of guns, not just Saturday Night Specials," Rainey says, explaining his eventual opposition. "It even banned the gun I used to carry."

The primary legislation for pro-gun forces was "right-to-carry" bills, the most successful of which was authored by conservative Assemblyman Pete Knight (R-Palmdale). "I want to see ... a level playing field across the state," Knight says. "Sheriffs and chiefs have not been issuing these permits in a reasonable manner. I believe those permits should be issued unless there is a reason for not issuing them."

One bewildering constant in these debates is the use of law-enforcement testimonials by both sides. The California Police Chiefs' Association, in particular, appears to have aligned itself with gun-control advocates. The NRA claims support from "rank-and-file" cops, but a monolithic, uniform opinion at any rank proves difficult to find. "What we're interested in is reasonable laws related to control of [guns'] use in society," says Sheriff Craig of Sacramento. "That doesn't mean there is an opinion of law enforcement."

At the heart of the debate lies the Second Amendment to the United States Constitution, which reads: "A well regulated militia being necessary to the security of a free state, the right of the people to bear arms shall not be infringed."

It is a troublesome string of phrases, both grammatically and legally. The NRA

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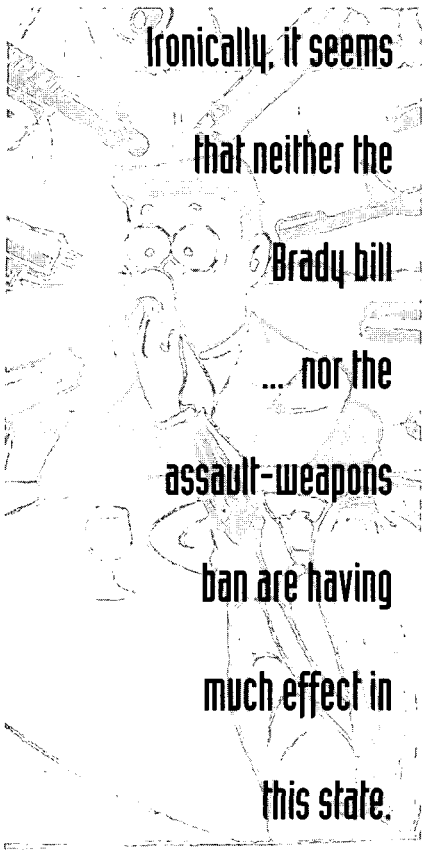

and other pro-gun groups argue that the latter half of the amendment proves the framers envisioned a virtually unlimited individual right to own and carry weapons without government interference. "Past practices of the country would indicate that it is an individual right," Helsley says.

It is in discussions of the Second Amendment and state militias that the framers' revolutionary past is most apparent. State militias were widely viewed as a check on a potentially tyrannical federal standing army. Adult white male member of many states were required to keep arms available and practice with militias periodically — hence the connection between militias and individual rights.

But gun-control advocates believe that any such right turns on the phrase "well-regulated." "'A well-regulated militia' means someone must regulate," says Campbell, a former Stanford University law professor. Since the militia, if it exists at all, is made up of a given state's armed citizens, he explains, that state has the right to regulate its citizens' use and ownership of weapons. This would theoretically extend as far as the state — but not federal — right to ban personal ownership of firearms altogether, in favor of keeping militia weapons in a central state armory for potential militia use. Campbell does not support taking regulation this far, however. He also notes that courts have not incorporated the right to bear arms into the Fourteenth Amendment, which applies most of the Bill of Rights' limitations on federal power to state governments.

California is one of the few states in the country that does not include a right-to-bear-arms provision into its own constitution. What it has done since the late 1960s is reserve to the state government the bulk of the authority to write firearms legislation. Richardson, who carried the 1969 preemption law as a state senator, believes his law reserves all gun-related regulation rights to the state. "That's what was intended, that's what was debated, that's what we had in mind," he says. The point, he explains, by explicitly occupying the total field of firearms legislation, was to "keep kooky cities like San Francisco" from creating a statewide patchwork of

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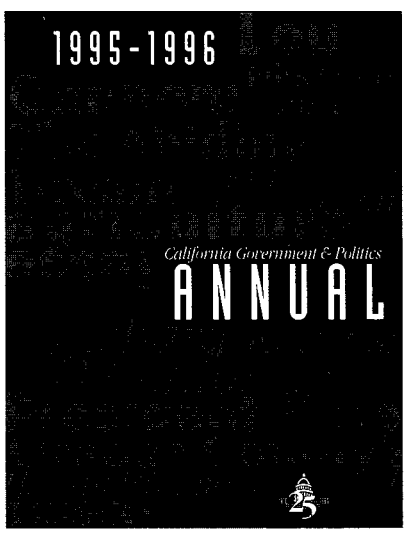

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contradictory local gun laws.

But Erik Gorovitz, a San Francisco-based attorney working with the Legal Community Against Violence, disagrees with Richardson's interpretation. Gorovitz, in the final stages of a project researching state pre-emption law, believes that Richardson's law actually leaves significant space to pass local legislation on gun-related issues. "There has been a sort of chilling of local regulation because of the fear of protracted legal challenges," Gorovitz says. "In fact, there is plenty of room to be creative."

A few communities around the state already are heeding Gorovitz's advice. Pasadena has passed a city ordinance requiring the registration of ammunition. Lafayette, in Contra Costa County, has imposed strict and costly security requirements on gun dealers in an effort to discourage unmonitored "kitchen-table" dealers selling from their homes. Several municipalities around the state have already passed or are working on efforts to trace and regulate local gun dealers.

And in late August, Vice-Mayor Trixie Johnson of San Jose proposed a package of gun-control measures in front of her City Council, some already a part of city law and some — such as the requirement that all guns be sold with a trigger lock preventing accidental firing — new. Her proposals prompted an outburst of local lobbying. "The NRA [was] all over the place," she says.

About 70 people — warned over the Internet, by word of mouth and by faxes from the NRA — showed up to speak out against her provisions at a City Council hearing. Opponents also began fervently writing letters, calling and visiting council members to register their feelings, often promising to target supporters of the control measures come election time. "There's very clearly an undercurrent of absolute paranoia that this is a prelude to taking away their guns," Johnson said.

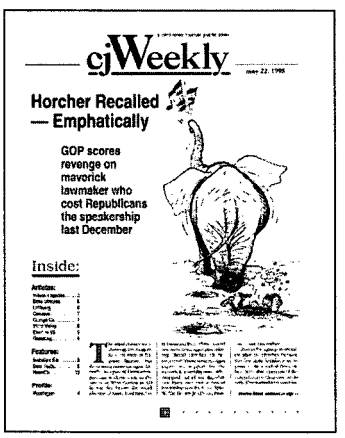
The response of the NRA and other gun owners' groups to such efforts is simple: They will try to take away the offending politicians' jobs. The 1994 recall campaign against then-Senate President pro Tempore David Roberti (D-Van Nuys) exemplified this approach. Richardson's group is still proud of that effort, despite its failure. "He's no longer around, is he?" Richardson says, noting that the money and time Roberti spent on the recall probably sunk his subsequent primary campaign for state treasurer. "We sent a big message to the Legislature with that one."

Richardson's group and the NRA also contribute money and volunteers to ordinary campaigns. "There's a lot of candidates that feel they won" because of NRA volunteers and dollars, Helsley says. Gun-control advocates would be the last to challenge this. "Sacramento has been bought by the gun lobby," says a frustrated Cooney.

Both pro-gun and gun-control groups tout their expanding grass-roots operations. The 1996 elections will be a key test for both, potentially providing the impetus to end the current stalemate. Until then, there will be emotional speeches on both sides, but little movement.

Richardson at least is confident. "Sometimes we feel it necessary to go in and scar people up," he says. This year, "there will be some surprises."

The insiders' newsletter about political life in the nation's largest state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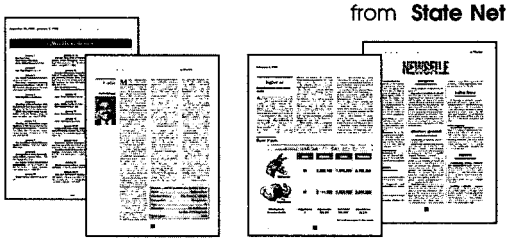

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Looking for the

Labor once boasted of enormous political clout, but these days is it politically wiser to hide that union label?

By Laureen Lazarovici

Agricultural workers, Salinas Valley, California
Courtesy of the Labor Archives and Research Center, SFSU

Labor Day 1995 came and went. Do you know where your union was? Chances are that you don't belong to one. In 1951, 40.8 percent of California workers belonged to labor unions. By 1989, that proportion had dropped by more than half, to 19.1 percent, according to the state's Division of Labor Statistics. The new Republican majority in the state Assembly — after decades of Democratic dominance — is flexing its muscles and launching a full scale assault on a wide range of worker protections. Labor advocates warn, however, that if the GOP and its allies in the employer community push too hard, they could be setting the stage for a backlash.

Assemblyman Wally Knox (D-Los Angeles), himself a labor lawyer, chairs the Assembly Labor and Employment Committee. He minces no words when he proclaims: "Labor protections, including ones that began almost 90 years ago, find themselves under attack this year. It's no longer about trimming the perceived excesses of a progressive agenda. I wouldn't be surprised if we saw the 'Omnibus repeal of the 20th century' bill." But Senator Rob Hurtt (R-Garden Grove), vice chair of the Senate Industrial Relations Committee, says that the Republican agenda just seems aggressive when compared to labor's long domination. "Republicans are trying to get things back to balance," he says.

Employers agree that the new Republican majority has created a new political terrain. "The whole game has

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union label

B-26 Cockpit assembly line
photo By Harry Gann

changed completely," says Julianne Broyles, director of insurance and employee relations for the California Chamber of Commerce. "Especially since labor's constituency at the Capitol is dwindling, they are in panic mode," she says. But panic may not be warranted — yet. As Cliff Allenby, lobbyist for the California Building Industry Association, points out, no significant labor-related legislation has made it even close to the governor's desk. "There's more rhetoric than in the past, but things are pretty much status quo," he says.

Nonetheless, legislative staffers report that an unprecedented number of bills are being introduced on key labor issues, including prevailing wage laws for construction projects. Those laws mandate that contractors pay the going rate — the prevailing wage — in an area when they are working on a government project. Republicans want to create an array of exemptions to prevailing wage laws, arguing that they would lower the costs of construction. But C.C. Myers, president of the construction firm that rebuilt the shattered Santa Monica freeway after 1994's Northridge earthquake, disagrees. He wrote in a recent op-ed piece that, "lower wages don't mean lower costs. Lower wages means shoddy work, more accidents, more injuries, more repairs." Danny Curtain, director of the California State Council of Carpenters, adds: "That's a fundamental issue for carpenters. If you undercut that wage, there will be a downward spiral on wages. You'll lose the apprenticeship programs, and then you'll lose skills."

All the prevailing wage bills failed in committee on party line votes in April when there were an even number of Democrats and Republicans on the panel. However, in June, all Assembly committees were given Republican majorities. So these bills — and others — could pass when they come back up on reconsideration next year.

Another effort that could face similar fate is a bill to do away with the eight-hour day. State law currently requires that employees get paid overtime for working more than eight hours in one day, while federal rules mandate such pay based on working more than 40 hours per week. Employers argue they need more flexibility to allow employees to tend to family emergencies and to implement innovative work schedules such as four-day, 10-hour day weeks. But unions have been fighting the move. "In 1911, Gov. Hiram Johnson took office and the eight-hour day was implemented," explains Knox. "It began as a protection for women," says Knox, who hangs a photo of Sally Field from the movie "Norma Rae" in his office.

The bill stalled in committee, and Knox is trying to craft a compromise that would give employees two hours of makeup time a week if they missed some work without having to get paid overtime. "Inside each of these issues is a kernel of legitimate concern," acknowledges Knox. "With the eight-hour day, we have to ask ourselves, 'Is there a way to have flexibility and also protect workers?' Inflexibility in implementing it builds political steam to divide people." But, he wonders if the spirit of compromise can flourish in a deeply divided and partisan chamber. "It is not clear whether there is room for that dialogue," he says. The employer community, for one, isn't getting on board, and the bill has hit a brick wall. "It's smoke and mirrors, something for liberals to hide behind," says the Chamber of Commerce's Broyles. "It avoids the real issue."

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International Ladies' Garment Workers Union, San Francisco, 1940s
Courtesy of the Labor Archives and Research Center, SFSU

Meanwhile, a measure to repeal the requirement for new ergonomic standards looks like it has a good chance to pass on the Assembly floor.

In contrast to the Assembly, Democrats and their allies in labor still have a majority — barely — in the Senate. There, a bill to raise California's minimum wage passed with only one Republican vote. But it faces bleak prospects in the Assembly and an even bleaker one on the governor's desk. With Democrats arguing that the working poor can't raise families toiling for $4.25 an hour even full-time, and Republicans countering that hiking the minimum wage would cause job losses and increase welfare, Senate President Pro Tem Bill Lockyer (D-Hayward) said that the debate illustrates "the fundamental principles that divide the political parties — and that makes it harder to effectuate compromise."

Some labor leaders are talking about putting a minimum wage increase on the November 1996 ballot — which could have tactical advantages in addition to the bill's actual substance. "A ballot initiative would be a way to bring low wage workers out to the polls," says Allen Davenport, legislative director for the Service Employees International Union. "It would help our voter registration efforts." In addition, it could help Democrats win back marginal legislative seats lost during 1994's GOP tidal wave. Others, however, say they can't imagine enough money being raised for such an effort in a year when issues like affirmative action and school funding may be on the ballot, competing for labor dollars. But Senator Hilda Solis (D-Los Angeles), who wrote the minimum wage bill, says: "It's the

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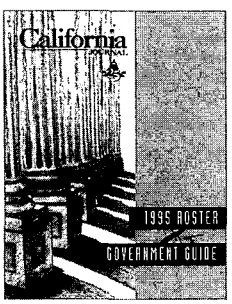

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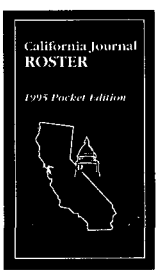

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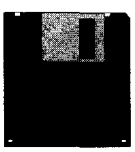

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issue to watch, especially on the presidential level. It will be a wedge issue."

As labor adjusts to a new legislative environment, it is also dealing with its own internal shifts. Seventy-nine-year-old Jack Henning, the legendary head of the California Federation of Labor, has announced he will not run for re-election next summer. Vying to replace him are expected to be Tom Rankin, the Federation's chief lobbyist; carpenters' leader Curtain; and Art Pulaski, head of the San Mateo Central Labor Council. All are a generation younger than Henning.

Meanwhile, public-sector unions are bracing for large cuts in their work forces in financially strapped counties like Los Angeles and Orange. In Sacramento, the California State Employees Association is having a falling out with its own political action committee. Public sector unions, however, are one of the few bright spots nationally and in California in terms of growth.

While most unions are scraping by with declining memberships and setbacks on the federal level (such as the failure of striker-replacement legislation), some are winning important victories. The United Food and Commercial Workers successfully fought to retain their health insurance benefits during a week-long strike in Northern California. And SEIU has been organizing thousands of low-wage workers in their "Justice for Janitors" campaign, from Los Angeles to the Silicon Valley to Sacramento.

Still, the political climate is growing increasingly hostile to the interests of organized labor, and there is little evidence to suggest that unions have a plan to resist it. "The Republicans are dominated by the right-wing element," notes Knox. Patrick Henning, the longtime chief consultant to the Senate Industrial Relations Committee (and Jack Henning's son), points out that 25 years ago, when the GOP last controlled the Legislature, there were moderate and liberal Republicans who were supported by labor. "You don't have that anymore," he says. Hurtt attributes the shift less to ideology than to the fact that there are more business people — like himself — in the Capitol. "The discussions are getting better," he says. "There's an understanding, a grudging realization, that the unions and Democrats have to do things that help business."

But unions and their Democratic allies seem content to let the Republicans sow the seeds of their own destruction. "We got caught in the national tidal wave," says Jack Henning. "I think it's an aberration. There will be a return to Democratic control." Many say that if the Republicans continue with their aggressive anti-labor agenda, they will alienate voters. "It's ripe for a rebound," says carpenters' union leader Curtain. Labor's adversaries, however, advise unions to take a sober look at new political realities. "For 20 years they've expected to have their agenda met," says Chamber of Commerce representative Broyles. "These days, the only things getting through is what people agree on. Compromise is the watchword, and labor hasn't come to that realization."

Critics within the labor movement aren't willing to give into the business community's push for "compromise," though, calling instead for a revitalized union movement. "There needs to be an aggressive thrust towards organizing," says Kent Wong, director of the UCLA Labor Center. "We now have public discussion of the wage gap and wage stagnation, and unions provide the only hope to challenge these gross inequalities."

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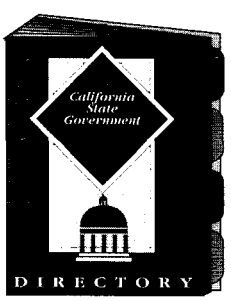

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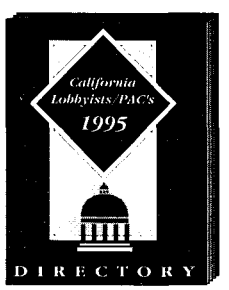

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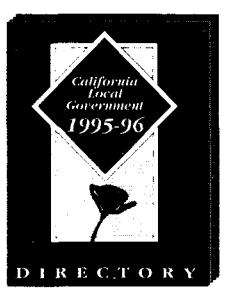

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Washington Notes

PERSPECTIVE

By Marc Sandalow

Pete blasts off (yawn)

The Pete-Wilson-for-president juggernaut rolled through the East last week, where reaction might well be described in two words: "So what?" Not that anyone expected easterners in the final days of summer to fawn over a California governor, let alone afford him the same enthusiasm they have shown for Newt Gingrich or Cal Ripken Jr.

But it is surely not a good sign for team Wilson — or perhaps any of the announced presidential aspirants — that the arrival of an ice-cream truck on the edge of a Portsmouth, New Hampshire, park generated a stir of excitement unseen in the small crowd listening to the candidate across the common.

It was the same story all week.

In New York, where Wilson began his uphill quest in the shadow of the Statue of Liberty, not a single public official — not an assemblyman from Albany or a dogcatcher from Queens — attended the event. The next morning in Boston, an Irish street band outside Faneuil Hall easily attracted as many onlookers as the Wilson oration inside. Later at a law-and-order event in a Philadelphia police union hall, the governor was surrounded on stage not by a sea of blue, but by three non-uniformed law-enforcement officials who stood awkwardly nearby as Wilson read a speech. Indeed, the most palpable excitement came from the media, which treated his presidential kickoff tour like a tall drink in the middle of a dry summer of political news.

True, it is early, even in the politically obsessed early primary states. Four years ago, Bill Clinton was not even a glimmer in the electorate's eye. And Wilson is just now unleashing a set of television commercials which have always been a hallmark of his success. But the fact that Ross Perot can entice every presidential hopeful and national political reporter to his doorstep in Dallas, or that Gingrich can command crowds of thousands of book buyers in dozens of cities across the country, and Wilson can't even lure a family of tourists away from an ice-cream truck, is not lost on party officials.

In a year when conservatives and political outsiders believe they have finally struck a chord with middle America, many don't want to waste a presidential nomination on a steady-but-bland mainstream candidate like Wilson. Of course, most of the GOP field faces the same problem. But Wilson's inability to generate excitement is an issue that must be addressed if he is to make the jump from "top-tier challenger to Bob Dole," as his campaign now describes him, to "President Wilson."

To guarantee at least some level of interest, Wilson waited for the slowest news week of the summer to announce his candidacy, and then selected locations and topics calculated to generate controversy. In front of the Statue of Liberty, he talked tough against illegal immigrants. In Philadelphia, he demanded the death penalty for Mumia Abu-Jamal, a local journalist and convicted cop killer who has gained a sympathetic following around the world.

Any recognition, even criticism, team Wilson figured, would be worth the attention. And on that level, the "liberty tour," as it was dubbed, was successful. Former New York Governor Mario Cuomo chided Wilson for having the "chutzpah to use the Statue of Liberty to anoint a candidacy that is built on the most negative proposition he can find on the agenda." The *New York Times* editorial that day was entitled "An Insult to Miss Liberty." Former Tennessee Governor Lamar Alexander, himself a candidate for the GOP nomination, released radio ads in New Hampshire denouncing Wilson. And everywhere Wilson went there were protesters — although the most vocal were Bill Press and Bob Mulholland from the California Democratic Party who traveled from Sacramento to make themselves a nuisance to their home state nemesis.

The events were chronicled on the evening news, and like clockwork, Wilson's poll numbers went up. A survey conducted by CNN in the midst of the tour showed Wilson moving into a virtual tie with Texas Senator Phil Gramm as the leading challenger to frontrunner Dole. Even the White House reacted. As Wilson was announcing his candidacy in Manhattan's Battery Park, INS commissioner Doris Meissner teamed up with New York Governor George Pataki just a few blocks away to announce the deportation of a several dozen criminal immigrants. The following week, President Clinton himself stopped off in Monterey on his way home from Hawaii to provide a counterpoint to Wilson's crusades against illegal immigrants and affirmative action.

But such moral victories will not add up to 272 electoral votes. Somewhere along the way Wilson must give voters something to get excited about. Wilson's limits as a retail campaigner are still painfully obvious. Accompanied on the tour by Massachusetts Governor Bill Weld, the contrast was stunning — Weld glad-handing, laughing, slapping people on the back and telling jokes, while Wilson was either stiffly shaking hands or nowhere to be seen.

Those whose read about Wilson says he looks like a formidable candidate. But those who see him in person are still apt to say, "How did this guy get to be governor of California?" Unlike the last two California executives on the national stage — Ronald Reagan and Jerry Brown — Wilson has almost no national identity, vaguely known as a crusader against illegal immigration and affirmative action.

One reporter for a Washington-based publication jumped off the five-day "liberty tour" after just 24 hours. "This thing is over," he said. "This guy doesn't have a chance."

Wilson has a long, long way to go before he can convince the Eastern electorate that such cynical assessments are wrong.

Marc Sandalow is a Washington, D.C., correspondent for the San Francisco Chronicle.

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